

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.67 OF 2017

GEORGE ODHIAMBO AWINDA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, George Odhiambo Awinda was charged with offence of **stealing a motor vehicle** contrary to **Section 278A** of the **Penal Code**. The particulars of the offence were that on 6th August 2010 at Huruma Flat Nairobi County, the Applicant, jointly with others not before court stole a motor vehicle Toyota Shark Matatu Registration No.KBJ 093K valued at Kshs.1.3 million, the property of Riziki Akugu Nyabali. When the Applicant was arraigned before the trial magistrate's court, he pleaded not guilty to the charge. After full trial, he was convicted as charged and sentenced to serve three years imprisonment.

The Applicant has applied to this court for revision of sentence. He states that he is ailing and is currently under medication. He had lost his child while in prison. He pleads with the court to sentence him to serve a non-custodial sentence. During the hearing of the application, the Applicant told the court that he was remaining with ten (10) months of his sentence, having served fifteen (15) months of his prison term. In the period that he has been in prison, he had reformed, had learnt many skills that will assist him upon his release from prison. He pleaded with the court to exercise leniency. Ms. Kimiri for the State told the court that she was not averse to the court favourably considering the Applicant's application for reduction of sentence noting that the Applicant had already served a substantial part of his sentence.

When the trial magistrate sentenced the Applicant to serve the custodial sentence, it was exercising judicial discretion. This court can only interfere with such exercise of discretion if it is established, either that the sentence was too harsh or too lenient in the circumstances. The court will also interfere with the imposition of the custodial sentence if it is established that the trial magistrate applied the wrong principles of the law in sentencing the Applicant or that the sentence was illegal. In the present appeal, it was clear to this court that the trial court sentenced the Applicant to serve a legal custodial sentence. However, this court has noted that since the Applicant's incarceration, he has learnt his lesson. He is remorseful and undertakes to be a useful member of the society upon his release. The State is not opposed to the Applicant's early release.

In the premises therefore, this court will exercise its discretion and commute the Applicant's sentence to the period served. The Applicant is ordered set at liberty forthwith and released from prison unless otherwise lawfully held. It is so ordered.

DATED AT NAIROBI THIS 8TH DAY OF FEBRUARY 2018

L. KIMARU

JUDGE