

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.493 OF 2017

FELIX MAIKUMA SITATI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Felix Maikuma Sitati was convicted of three counts under the **Penal Code**. He was convicted of **burglary** contrary to **Section 304(2)** and stealing contrary to **Section 279(b)**. He was sentenced to serve five (5) years imprisonment. He was also convicted of **stealing** contrary to **Section 275**. He was sentenced to serve one (1) year imprisonment. He was further convicted of **stealing a motor vehicle** contrary to **Section 278A**. He was sentenced to serve one (1) year imprisonment. The sentences were ordered to run concurrently. The sentences were meted out on 3rd March 2017.

In his application before this court, the Applicant pleaded with the court for a review of the said sentences. The Applicant told the court that he was remorseful and regretted the offences that he had committed. While in prison, he had learnt various trades and had even had a change of heart and become a Christian. He explained that he was married with one child. His family depended on him as the sole breadwinner. In the period that he had been in lawful custody, he had learnt his lesson. He would be a good citizen if the court exercises its discretion and reviews his sentence. Ms. Kimiri for the State opposed the application. She submitted that the complainant lost a colossal sum being the values of properties that were lost as a result of the Applicant's criminal conduct. She was of the view that the custodial sentences imposed on the Applicant fitted the crime. In fact, the sentences were lenient in the circumstances. She urged the court not to interfere with the same.

The Court of Appeal in **Ahmad Abolfathi Mohammed & Another –vs- Republic Criminal Appeal No. 135 of 2016** (unreported) held at Page 25 thus:

“As what is challenged in this appeal regarding sentence is essentially the exercise of discretion, as a principle this Court will normally not interfere with exercise of discretion by the court appealed from unless it is demonstrated that the court acted on wrong principle; ignored material factors; took into account irrelevant considerations; or on the whole that the sentence is manifestly excessive. In Bernard Kimani Gacheru v. Republic, Cr App No.188 of 2000 this Court stated thus:

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account, some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, any one of the matters already stated is shown to exist.”

In the present application, the Applicant pleads with the court to exercise its discretion in his favour and order a reduction of custodial sentence. The State opposed to the Applicant's application. It was clear to this court that the trial court properly exercised its discretion when it sentenced the Applicant to serve the custodial sentences that were imposed. The trial court rightly took into consideration that most of the stolen items were not recovered. Although the Applicant was a first offender, it was evident that he had committed serious offences that deserved deterrent custodial sentences. This court, however, notes that the trial court did not take into consideration the period that the Applicant had been in remand custody prior to his conviction. That period is approximately one (1) year. The Applicant did not have the benefit of being released on bail pending trial.

In the premises therefore, this court will take into account that period that the Applicant was in remand custody as a result of which, in the 1st Count, the Applicant is sentenced to serve three (3) years imprisonment instead of five (5) years imprisonment. That sentence shall take effect from 3rd March 2017. It is so ordered.

DATED AT NAIROBI THIS 1ST DAY OF MARCH 2018

L. KIMARU

JUDGE