Odari v Republic (Criminal Revision E069 of 2025)
[2025] KEHC 14847 (KLR) (22 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14847 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CRIMINAL REVISION E069 OF 2025

JRA WANANDA, J

OCTOBER 22, 2025

BETWEEN

JEFREY SKIPMAN ODARI ..... APPLICANT

AND

REPUBLIC ..... RESPONDENT

RULING

1. The Applicant was charged in Eldoret Chief Magistrate's Criminal Case No. E211 of 2025, on two counts of offences.

2. In Count I, he was charged with the offence of stealing of motor vehicle parts contrary to Section 279(c) of the Penal Code. The particulars were that on the nights of diverse dates between 12/01/2025, and 17/01/2025, at Rabbi School Kahoya area in Turbo Sub-County within Uasin Gishu County, he stole 3 speakers from two respective motor vehicles, all valued at the sum of Kshs 13,500/-, the property of the said Rabbi School.

3. In Count II, the charge was the offence of failing to prevent a felony contrary to Section 392 of the Penal Code. The particulars were that on the same nights of diverse dates stated above, at the same school, while on duty guarding the school, he failed to use all reasonable means to prevent the commission of a felony, namely, theft of the items stated above.

4. The Appellant took plea on 3/2/2025 before Hon. P.N. Areri (SPM), and pleaded guilty. The Magistrate accordingly convicted him, and on 4/2/2025, sentenced him to serve 2 years imprisonment. The Applicant has now approached this Court basically, seeking it reviews the sentence. He prays for a non-custodial sentence. His grounds are that he is remorseful and repentant, he is a 1st offender, reformed and rehabilitated, and he has a family that depends on him as the breadwinner.

5. Although I gave the parties leave to file written Submissions, the Applicant opted not to file any. On its part, the State, through Principal Prosecution Counsel, Claire Muriithi, filed the Submissions dated 23/07/2025.

6. Ms. Muriithi, in her Submissions, urged that sentencing is a discretion of the Court exercised upon defined principles of law, facts and circumstances of the case, and she cited the Court of Appeal case of Thomas Mwambu Wenyi v Republic [2017]. She also observed that when sentencing, the Court is required to consider the mitigating as well as any aggravating circumstances, and cited the case of Fatuma Hassan Sato-v-Republic [2006] eKLR.

7. She then urged that the offence which the Applicant was charged with prescribes a possible sentence of 14 years imprisonment but the Applicant was sentenced to only 2 years. According to her therefore, the trial Court was lenient. She contended that the Applicant has not stated that the sentence is manifestly harsh or excessive, or that the sentence is illegal or improper or that the trial Court acted on the wrong principles or omitted relevant factors or took into account irrelevant factors in sentencing, or that the proceeding was irregular or in violation of his right or fundamental freedom. She urged that the Applicant has benefited from a less severe of the possible punishment, and that the trial Court did not exercise its discretion arbitrarily. Counsel further pointed out that the trial Court proceedings indicate that before sentencing, the Court considered the mitigating factor that the Applicant was a 1st offender, the family bread-winner, and his pledge that he will not be a repeat offender, and that one of the aggravating factors was that the Applicant was a habitual offender. Counsel observed that the aggravating circumstances outweighed the mitigating circumstances, and hence the sentence by the trial Court. In respect to the Applicant's prayer for a non-custodial sentence, she contended that the reasons advanced for review of sentence were all considered by the trial Court and the only new material is that he has rehabilitated. She then observed that the Applicant was convicted and sentenced on 4/02/2025, and has thus spent about 5 months in custody, and contended that she finds it hard to believe that he has rehabilitated as he claims. In conclusion, she submitted that the reasons advanced are not sufficient to warrant an interference with the discretion of the trial Court in sentencing.

Determination

8. The issue for determination in this matter is "whether this Court should invoke its supervisory jurisdiction of revision and review the sentence imposed by the trial Court".

9. The jurisdiction of the High Court in respect to the powers of Revision is supervisory and is provided under *the Constitution* in Article 165 (6) and (7) in the following terms:

> " 6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
>
> (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice."

10. Section 362 of the Criminal Procedure Code, then provides as follows:

> " Revision
>
> 362. Power of High Court to call for records

> The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court."

11. In considering an application for revision therefore, the operative phrase is "correctness, legality or propriety" of any finding, sentence or order made by the lower Court.

12. The purpose and nature of the revisionary jurisdiction of the High Court was examined by Odunga J (as he then was), in the case of Joseph Nduvi Mbuvi v Republic [2019] eKLR in which he observed as follows:

> "In my considered view, the object of the revisional jurisdiction of the High Court is to enable the high Court in appropriate cases, whether during the pendency of the proceedings in the subordinate court or at the conclusion of the proceedings to correct manifest irregularities or illegalities and give appropriate directions on the manner in which the trial, if still ongoing, should be proceeded with. In other words, the High Court's revisionary jurisdiction includes ensuring that where the proceeding in the lower court has been legally derailed, necessary directions are given to bring the same back on track so that the trial proceeds towards its intended destination without hitches. Not only is the jurisdiction exercisable where the subordinate court has made a finding, sentence or order but goes on to state that it is also exercisable to determine the regularity of any proceedings of any such subordinate court as well."

13. On his part, Nyakundi J, in Prosecutor v Stephen Lesinko [2018] eKLR outlined the principles that should guide a Court in exercising its revisionary jurisdiction as follows:

    (a) where the decision is grossly erroneous;

    (b) where there is no compliance with the provisions of the law;

    (c) where the finding of fact affecting the decision is not based on evidence or it is result of misreading or non-reading of evidence on record;

    (d) where the material evidence on the parties is not considered; and

    (e) where the judicial discretion is exercised arbitrarily or perversely if the lower court ignores facts and tries the accused of lesser offence.

14. As correctly also held by Odunga J (as he then was), in the case of Joseph Nduvi Mbuvi v Republic (supra), the reversionary power of the High Court is not meant to be invoked to micro-manage the subordinate Courts. This is what the Judge stated:

> "14. It is, however my view that the jurisdiction should not be invoked so as to micro-manage the Lower Courts in the conduct and management of their proceedings ....."

15. Section 279(c) of the Penal Code under which the Applicant was convicted, provide as follows:

    SUBPARA 279.

    Stealing from the person; stealing goods in transit, etc.

    If the theft is committed under any of the circumstances following, that is to say—

.....

(c) if the thing is stolen from any kind of vessel or vehicle or place of deposit used for the conveyance or custody of goods in transit from one place to another;

.....

the offender is liable to imprisonment for fourteen years.

16. In respect to the invitation to this Court to Review the sentence imposed by the trial Court, it must always be remembered that sentencing is an exercise of discretion reserved for the trial Court. A higher Court will therefore only interfere with such sentence in specified limited and justified circumstances. The Court of Appeal restated this principle in the case of Shadrack Kipkoech Kogo v R, Eldoret Criminal Appeal No. 253 of 2003, as follows:

> " Sentence is essentially an exercise of discretion by the trial court and for this court to interfere it must be shown that in passing the sentence, the sentencing court took into account an irrelevant factor or that a wrong principle was applied or that short of these, the sentence itself is so excessive and therefore an error of principle must be interfered."

17. In determining whether to interfere with the sentence imposed by the trial Court, it must also be recalled that the position in law is that the sentence to be imposed must be commensurate to the blameworthiness of the offender. Before settling on a sentence, the trial Court must therefore consider the facts and the circumstances of the case in its entirety. In restating the above principles, the Court of Appeal in the case of Thomas Mwambu Wenyi v Republic (2017) eKLR quoted the decision of the Supreme Court of India made in the case of Alister Anthony Pereira v State of Mahareshtra, where it was held as follows:

> " 70. Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no strait jacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.
>
> 71. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence
>
> As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence."

18. Similarly, in the case of Daniel Kipkosgei Letting v Republic [2021] eKLR, the Court of Appeal stated that:

> " ..... we observe that the purpose and objectives of sentencing as stated in the Judiciary Sentencing policy should be commensurate and proportionate to the crime committed and

the manner in which it was committed. The sentencing should be one that meets the end of justice and ensures that the principles of proportionality, deterrence and rehabilitation are adhered to. ....."

19. Applying the above principles to the facts of this case, I have looked at the record of the trial Court and noted that in sentencing the Applicant, the trial Court stated as follows:

> " Record and mitigation considered. Accused is a habitual offender. The accused to serve two years imprisonment".

20. The Applicant was therefore given the opportunity to mitigate, which he did by stating that he has a family which depends on him, and he will not repeat the offence, and the trial Magistrate considered that the Applicant is a habitual offender. By stealing parts from several vehicles belonging to the very school which he had been employed to guard, and to protect from such thefts, the Applicant also broke the trust bestowed upon him by the employer.

21. I however also note that the Applicant pleaded guilty and thus saved the Court considerable time and also saved the Prosecution resources. The items he stole were also of the minimal value of only Kshs 13,500/-. The items were also fully recovered from him intact within a day. I find these to be mitigating factors which the trial Magistrate may have overlooked and thus failed to take into account. It is not also not clear where the trial Magistrate obtained the information that the Applicant was a "habitual offender", when all indication is that he was a 1st offender. The Applicant is also in his prime age, and although the offence he was convicted of merits a severe sentence, I believe that retribution will be best achieved, not by incarcerating him for an unreasonably long period of time, but by giving him a chance to come out of jail after some reasonable period of time and give him a chance to be of benefit to the society. For this reason, I invoke this Court's supervisory powers of revision and reduce the sentence.

Final Orders

22. In the end, I rule and order as follows:

    i. I set aside the sentence of 2 years imprisonment imposed by the trial Court in Eldoret Chief Magistrate's Criminal Case No. E211 of 2025, and substitute it with one of 1year imprisonment.

    ii. In the event that the Applicant has now fully served the period of 1 year in prison, then he shall be released unless held for any other lawful reason.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 22ND DAY OF OCTOBER 2025

.....

WANANDA JOHN R. ANURO

JUDGE

Delivered in the presence of:

Applicant present virtually from Kabarnet Prison

Ms. Muriithi for the State

Court Assistant: Brian Kimathi