

REPUBLIC OF KENYA

HIGH COURT AT NYAHURURU

CRIMINAL REVISION NO. E050 OF 2023 CONSOLIDATED

WITH NO. E070 OF 2025

SIMON MOJONG LOPAYAN.....1ST
APPLICANT

DANIEL KIPAI LOTNYARI.....2ND APPLICANT

ELIUD EKWAMU LOPAYAN.....3RD
APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

- 1.** The Applicants, were arraigned before ***Nyahururu Chief Magistrate's Court Criminal Case No. E981 of 2023,*** for the offence of **Stock-theft Contrary to Section 278 of the Penal Code**, with an alternative Count of **Handling Stolen Goods contrary to Section 322(1) (2) of the Penal Code**. What was stolen was one sheep valued at Ksh.20,000/- They admitted the charges at the outset, were convicted and sentenced to serve Five (5) years imprisonment for the main count.
- 2.** This court has been invited to consider mitigation put forth as the offenders have been rehabilitated so as to let them serve the remaining term as a non-custodial sentence as provided by the sentencing guidelines.

3. The application is opposed by the prosecution through learned Prosecution Counsel, Ms. Mumbe who urge that the finding and determination of the court was fair considering that the offenders pleaded guilty. She called upon the court to dismiss the application.
4. I have considered arguments raised and also perused the lower court record. An application for revision is provided for by the provisions of **Section 362 of the Criminal Procedure Code (CPC)** as read with **Section 364**. The court is enjoined to rectify errors, omissions, irregularities or procedural improprieties occasioned by the subordinate court which are apparent on record.
5. **Section 362 of the Criminal Procedure Code** specifically provides as follows:

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.

6. The applicant seeks to have the sentencing discretion of the trial court reconsidered. The law is that the court can only interfere with sentencing discretion under strict circumstances. In **Ahmad Abolfathi Mohammed & Another v Republic [2018] eKlr, Criminal Appeal No. 135 of 2016**, the Court of Appeal stated that:

“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.”

7. The revision court has limited powers compared to the appellate court. **Section 278 of the Penal Code** provides:

If the thing stolen is any of the following things, that is to say, a horse, mare, gelding, ass, mule, camel, ostrich, bull, cow, ox, ram, ewe, whether, goat or pig, or the young thereof the offender is liable to imprisonment for a period not exceeding fourteen years.

8. The court had the discretion in meting out sentence. The objective of sentencing would seek to balance rehabilitation, prevention of crime and generally restoration. In sentencing the offenders to five (5) years imprisonment, the court was of the view that the offence was rampant and the offenders had to be deterred so that it does not graduate in cattle rustling. A punishment ought to be proportional to the offence committed. Looking at the sentence imposed it was manifestly excessive.
9. The offenders were sentenced on 26/06/2023, so far, they have served two (2) years, six (6) months imprisonment. Considering what was stolen and in the spirit of decongestion of prisons, the sentence has served the objective of sentencing which calls of interference of the same.

10. The upshot of the above is that the application for revision is meritorious. Accordingly, I quash and set aside the sentence meted which I substitute with the term served. Therefore, the Applicants will be released forthwith unless otherwise lawfully held.

11. It is so ordered.

Dated, signed and delivered virtually this 5th day of November, 2025.

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L.N. MUTENDE

JUDGE