



**Moto v Republic (Miscellaneous Criminal Application E002 of 2025)
[2025] KEHC 1759 (KLR) (25 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1759 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKADARA
MISCELLANEOUS CRIMINAL APPLICATION E002 OF 2025**

J WAKIAGA, J

FEBRUARY 25, 2025

BETWEEN

ADNAN BWANGU MOTO APPLICANT

AND

REPUBLIC PROSECUTOR

RULING

1. The applicant was charged with the offence of stealing by agent contrary to section 283(c) of the [Penal Code](#) the particulars of which were that between 1st January 2022 at Burma within Nairobi County jointly with others not before the court stole Kshs 74,900 that had been received for and on account of Dennis Wanyama.
2. He pleaded not guilty to the charges and was tried, convicted and sentenced to eight (8) months imprisonment without an option of a fine,
3. Aggrieved by the said sentence, the applicant filed this application in which he sought that the jail term be reviewed and substituted with either a non- custodial sentenced or a fine.
4. The application was based upon the grounds that the applicant had already served a term of two months for an offence which a rose out of failure to account for sums which were received from a merry go round between friends and that from the evidence on record, it was clear that the complainants action was driven by factors far from the unaccounted-for monies, part of which had already been paid.

Submissions

5. At the hearing of the application, it was submitted by Mr. Astiba for the applicant that the same had served two months of the eight months' sentence and that taking into account the judiciary policy of prison decongestion the accused should be given a non-custodial sentence or in the alternative a fine



equivalent to the cash bail since during the trial the same was willing to refund the sum in dispute but the complainant declined to accept the said offer.

6. It was submitted that had it not been for the short period of the sentence, the applicant would have preferred an appeal as the trial court did not take into account the circumstances of the matter and the fact that the complainant had received substantial amount of the money in dispute.
7. In opposing the application , the prosecution through Ms Kabungi submitted that the offense attracts a sentence of seven years without an option of a fine and that the trial court granted the applicant very lenient terms for an offence which is not minor. She conceded that the trial court in sentencing the applicant did not take into account the fact that the complainant had recovered a sum of Kshs 100,000

Determination

8. The revision powers of this court are given under Article 165(6) and (7) which gives the court the supervisory jurisdiction over the subordinate courts with powers to make any order or give any directions to ensure t the fair administration of justice
9. This power is exercised in the manner provided for under the provisions of sections 362 of the [Criminal Procedure Code](#) which gives this court the power to call for and examine the record of any criminal proceedings before any subordinate court for the purposes of satisfying itself as to the correctness, legality or propriety of any finding or order recorded or passed and as to the regularity of any subordinate court .
10. In this matter upon examining of the proceedings herein, I have noted that the trial; court in sentencing the applicant did not take into account the fact that the applicant was willing and ready to pay to the compliant the money which was allegedly missing and that the transaction herein was from a marry go round or an equivalent of table banking amongst friends.
11. It is further noted that the court did not promote reconciliation between the complainant and the applicant and therefore the sentence herein was not appropriate.
12. I would therefore allow the application herein, set aside the sentence cve and substitute the trial courts sentence of eight month with an order for compensation of the complainant by the convict with a sum of Kshs 50,000 to be utilized from the cash bail deposited by the applicant in court to secure his release on bond,
13. The applicant shall therefore be released from custody forthwith unless otherwise lawfully held and it is ordered.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 25th DAY OF FEBRUARY 2025

J. WAKIAGA

JUDGE

In the presence of

