



**Oedo v Republic (Criminal Revision E020 of 2025)
[2025] KEHC 7205 (KLR) (28 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7205 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL REVISION E020 OF 2025
S MBUNGI, J
MAY 28, 2025**

BETWEEN

BEATRICE OEDO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This is a ruling on an application dated 29.04.2025 filed under certificate of Urgency seeking for review of the trial court sentence.
2. The applicant herein was charged with the offence of stealing contrary to section 268 as read with section 275 of the Penal Code. The particulars of the offence were that on diverse dates between 11th December, 2021 and 13th December, 2021 within Shianda market, Shianda sub-location in Mumias East Sub-County within Kakamega County, the applicant stole three hundred and forty seven thousand, two hundred and forty shillings(Kshs. 347,240) the property of the Joy Silc self-help woman group.
3. The revision application is premised on the grounds that the Applicant was sentenced to eighteen (18) months in prison without the option of a fine, despite the fact that the offence under Section 275 of the Penal Code permits the imposition of a fine as an alternative to imprisonment. It is the Applicant's position that a fine would have served the ends of justice without necessitating a custodial term.
4. Applicant's counsel has also stated that the applicant has already served more than six (6) months of the sentence, which constitutes a substantial portion of the total term, thereby demonstrating her commitment to complying with the judgment of the trial court.
5. Further, she has stated that she is an elderly person who is remorseful for her actions and has expressed willingness to make restitution. It is averred that the process of making amends has already commenced.



6. That the continued incarceration of the Applicant has rendered her unable to raise the sum required to compensate the complainants, thereby frustrating any possibility of reparations and defeating the spirit of restorative justice.
7. Lastly, the applicant has stated that That the urgency of this application is further necessitated by the likelihood of it being overtaken by events should it not be heard expeditiously, thereby occasioning prejudice to the Applicant who seeks to correct her wrongdoing through lawful and rehabilitative means.
8. The court directed that the applicant put submissions in support of her request for revision. At the time of writing this ruling, no submissions are in the court file, nor the CTS.

Analysis and Determination.

9. The applicant has cited (50(2) (p)& (q) of the Constitution provides as follows:-
 - “50(2) Every accused person has the right to a fair trial, which includes the right—
 - (p) to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and
 - (q) if convicted, to appeal to, or apply for review by, a higher court as prescribed by law.”
10. The Jurisdiction of the high court to review is donated by article 165 (6) & (7) of the Constitution. The article provides: -
 - “(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.”
11. The jurisdiction is supervisory and it extended to the High court to review the decisions and orders of the sub-ordinate court. It grants the High Court supervisory jurisdiction over sub-ordinate Courts.
12. The High Court exercises jurisdiction of revision over sub-ordinate Court on orders issued by the sub-ordinate Court. Section 362 of the Criminal Procedure Code 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.”
13. The discretion in sentencing rests with the trial judge because he or she has the knowledge of the relevant facts before him or her and in many instances, has observed the accused and witnesses’



demeanor. The discretion must however be exercised judiciously. In the Nigerian case of *African Continents Bank vs Nuamani* [1991] NWLI (part 86) 486, it was observed that,

“The exercise of court’s discretion is said to be judicial if the judge invokes the power in his capacity as a judge qua law. An exercise of discretionary power will be said to be judicial, if the power is exercised in accordance with the enabling statutes, discretionary power is said to be judicious if it arises or conveys the intellectual wisdom or prudent intellectual capacity of the judge. The exercise must be based on a sound and sensible judgment with a view to doing justice to the parties.”

14. In *Benard Kimani Vs Republic* (2002) Eklr the Court of Appeal stated that:

“It is now settled law, following several authorities by this Court and 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...”

15. The Supreme Court in *Francis Karioko Muruatetu & Another vs Republic*, Petition No. 15 of 2015, as a guide in sentencing held that:

“...the following guidelines with regard to mitigating factors are applicable in a re-hearing sentence for the conviction of a murder charge:

- a. age of the offender
- b. being a first offender;
- c. whether the offender pleaded guilty;
- d. character and record of the offender;
- e. commission of the offence in response to gender-based violence;
- f. remorsefulness of the offender;
- g. the possibility of reform and social re-adaptation of the offender;
- h. any other factor that the Court considers relevant.”

16. In *Dahir Hussein v. Republic* Criminal Appeal No. 1 of 2015; [2015] eKLR, the High Court held that the objectives of sentencing include: “deterrence, rehabilitation, accountability for one’s actions, society protection, retribution and denouncing the conduct by the offender on the harm done to the victim.”

17. The 2016 Judiciary of Kenya Sentencing Policy Guidelines lists the objectives of sentencing at page 15, paragraph 4.1 as follows:

“Sentences are imposed to meet the following objectives:

1. Retribution: To punish the offender for his/her criminal conduct in a just manner.



2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
3. Rehabilitation: To enable the offender reform from his criminal disposition and become a law abiding person.
4. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.
5. Community protection: To protect the community by incapacitating the offender.
6. Denunciation: To communicate the community's condemnation of the criminal conduct."

18. The Applicant was charged with the offence of stealing contrary to section 268 as read with section 275 of the penal code.
19. Section 275 of penal code provides the sentence, it states "Any person who steals anything capable of being stolen is guilty of the felony termed theft and is liable, unless owing to the circumstances of the theft or the nature of the thing stolen some other punishment is provided, to imprisonment for three years"
20. The Applicant was sentenced to serve 18 months imprisonment, this was within the Law. I find the sentence was lawful.
21. Before imposing the sentence, the trial court considered the probation officers report and noted that the accused was not remorseful, he also considered the accused mitigation. Therefore he cannot be faulted.
22. Since the sentence was lawful and was imposed after due consideration of the accused mitigation, its my view that the applicant option lies on appealing against the sentence if she feels aggrieved.
23. From the foregoing, I find the appeal has no merit. The same is dismissed.
24. Right of Appeal 14 days.

DATED, SIGNED ON 27TH MAY, 2025 AND DELIVERED AT KAKAMEGA THIS 28TH DAY OF MAY, 2025

S.N. MBUNGI

JUDGE

In the presence of:

Court Assistant: Elizabeth Agong'a

Ms. Osoro for the DPP Present online.

Katesh for the Applicant absent.

Applicant absent.

