Wamalwa v Republic (Criminal Revision E028 of 2025)
[2025] KEHC 12418 (KLR) (4 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12418 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CRIMINAL REVISION E028 OF 2025

RN NYAKUNDI, J

SEPTEMBER 4, 2025

BETWEEN

MICHAEL WANJALA WAMALWA ..... APPLICANT

AND

REPUBLIC ..... RESPONDENT

RULING

1. The Applicant Michael Wanjala Wamalwa was charged with the offence of burglary contrary to Section 304 (2) and stealing contrary to Section 279 (b) of the Penal Code.

2. The brief facts of the particulars are that on the night of the 7th day of December 2024 at Natwana village in Moi's Bridge Location, Soy Sub-County within Uasin Gishu County, jointly with another not before Court broke and entered the dwelling house of Amon Kiprono with intent to steal there in and did steal from there in one mattress measuring 4 by 6 inches, 1 vextron car battery, one duvet and assorted men clothes all valued at Kshs 27,000 the property of the said Amon Kiprono.

3. On Alternative Count he was charged with handling stolen property contrary to Section 322 (2) of the Penal Code. The facts are that Michael Wanjala Wamalwa on the 8th day of December 2024 at Natwana village in Moi's Bridge Location, Soy Sub-County within Uasin Gishu County, otherwise than in the course of stealing he dishonestly retained one mattress measuring 4 by 6 inches, one vextron car battery and one duvet knowing or having reasons to believe them to be stolen goods.

4. The Applicant was convicted on own plea of guilty and was sentenced to serve one (1) year imprisonment.

Decision

5. This matter is before this court to exercise the discretion and review the sentence. The law has been settled by the court of appeal in case of Benard Kimani Gacheru vs. Republic [2002] eKLR:

> " 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, anyone of the matters already states is shown to exist."

6. One of the staged approach to promote greater consistency in sentencing has been clearly articulated by the comparative dicta in People (DPP) Molly (Raymond) 2018 EICA 37 [17] and [20]: Thus;

> " Sentencing should ... be about substance over form, rather than the reverse, although it is increasingly recognized based on parallel developments in the field of judicial review that as an aspect of constitutional due process, and as an aspect of the right to a fair trial guaranteed by Article 6 ECHR, and accused is entitled to have the reasoning process, by means of which a sentencing court has arrived at the sentence which it has imposed upon him or her, rationally and adequately explained ... We have ... favoured the staged approach because it seems to us that it is likely to best focus judges at first instance on the overriding criterion of ensuring that sentences are proportionate both to the gravity of the offence and the circumstances of the offender ... In addition, it has the advantage of producing better reasoned sentencing judgments, that better explain to the interested parties why a particular sentence was imposed and which are also more readily amenable to review at appellate level."

7. In putting forth this application the Applicant has to discharge the burden of proof that when the learned trial Magistrate imposed the sentence there was a violation of Article 50 of *the Constitution* on the right to a fair hearing as relates to submissions on mitigation which was never taken into account and further the sentence also infringes the provision of Section 362 of the Criminal Procedure Code rendering it harsh, punitive and excessive. Unfortunately, none of these criteria has been espoused by the Applicant. The best thing to do in the circumstances is to dismiss the application for want of merit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET THIS 4th DAY OF SEPTEMBER 2025.

.....

R. NYAKUNDI

JUDGE