



**Otieno v Republic (Criminal Revision 21 of 2024)
[2024] KEHC 4145 (KLR) (30 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4145 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION 21 OF 2024
DR KAVEDZA, J
APRIL 30, 2024**

BETWEEN

TOBIAS OTIENO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged and after a full trial convicted for the offence of stealing of motor vehicle parts contrary to section 279(C) of the Penal Code Cap, 63 Laws of Kenya. He was sentenced to serve 5 years imprisonment. He has now filed an application seeking sentence review.
2. The application is premised on the grounds that the period spent in remand custody was not considered during sentencing. He urged the court to invoke section 333(2) and take into account the said period.
3. I have considered the application, the submissions by the applicant and the applicable law. Section 329 of the Criminal Procedure Code, gives judges and magistrates, in appropriate cases to consider mitigation and mete out a sentence that fits the offence committed despite another sentence being provided for under the Act in which the offence is prescribed.
4. In the present case, I find that the sentence meted out was lawful and within the discretion of the learned trial magistrate. Even so, it is my view that the same was harsh and excessive, considering that the applicant was a first offender and he was willing to pay for the stolen items.
5. Consequently, I hereby substitute the sentence of 5 years imprisonment meted by the trial court with a fine of Kshs. 60,000/=, in default to serve 12 months imprisonment. The sentence to commence on 8.12.2023.

Orders accordingly.



RULING DATED AND DELIVERED THIS 30TH DAY OF APRIL 2024

D. KAVEDZA

JUDGE

In presence of:

N/A for the Applicant

Mr. Mongare for the Respondent

Nelson C/A

