



**Mwau & another v Republic (Criminal Revision E001 of 2024)
[2024] KEHC 6923 (KLR) (28 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6923 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL REVISION E001 OF 2024
GMA DULU, J
MAY 28, 2024**

BETWEEN

DANIEL MNGELE MWAU 1ST APPLICANT

JULIUS MUSYIMI NDIKILI 2ND APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The two applicants herein were convicted by the Magistrate's court for stealing stock contrary to Section 268 of the Penal Code (Cap.63), and sentenced to five (5) years imprisonment each.
2. They did not appeal either against conviction or sentence.
3. They have however now come to this court through a Chamber Summons seeking revision of their sentences, and relied on 347 of the Criminal Procedure Code (Cap.75).
4. They also filed written submissions pleading remorsefulness, and that they were first offenders and further, that they were young, and asked for review of sentence.
5. The learned Prosecuting Counsel Mr. Sirima opposed the request for review of sentence and submitted that the trial Magistrate considered the mitigation factors and the period the applicants were in custody, before sentencing them. Counsel emphasized that the maximum sentence is 14 years imprisonment, and that if dissatisfied they should have appealed, failure to which, they lost the opportunity for review as this court under Section 364 of the Criminal Procedure Code, has no powers to review their sentence at their initiation once they chose not to appeal.
6. I agree with the submissions of the Prosecuting Counsel. In my view, the only opportunity that may be open to the applicants now, is a review of sentence by this court based on prison decongestion



considerations, subject to sentence review reports to be filed by the Probation Officer and considered by the court. Otherwise the present application for review of sentence is unmerited.

7. I dismiss the application for review of sentence.

DATED, SIGNED AND DELIVERED THIS 28TH DAY OF MAY 2024 IN OPEN COURT AT VOL.

GEORGE DULU

JUDGE

In the presence of:-

Alfred/Trizah – Court Assistants

Both applicants

Mr. Sirima for State

