**Nganga v Republic**

**Division:** High Court of Kenya at Nairobi

**Date of judgment:** 31 October 1974

**Case Number:** 412/1974 (9/75)

**Before:** Sir James Wicks CJ and Trevelyan J

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*[1] Criminal Practice and Procedure – Sentence – Rogue and vagabond – Increased sentence only*

*allowed when previous offence under the section – Penal Code, s.* 183 (*K.*).

**JUDGMENT**

The considered judgment of the court was read by

**Trevelyan J:** The appellant, whose record revealed that he had five previous convictions, but none for being a rogue and vagabond, was charged, contra s. 183 of the Penal Code, with being such a person. He pleaded guilty to the charge and was sentenced to serve imprisonment for 12 months’ for his offence. He now asks us to reduce that sentence, and we shall do so, not only because it was manifestly excessive in the circumstances of the case, but because it is unlawful. The section provides that each of the persons described therein: “shall be deemed to be a rogue and vagabond, and is guilty of a misdemeanour and is liable for the first offence to imprisonment for three months, and for every subsequent offence to imprisonment for one year.” Accordingly, a period of imprisonment for more than 3 months is only awardable where the accused person has previously been convicted of an offence under the section, convictions for other offences being immaterial. In the present case, a number of persons were arrested together with the appellant, and as they had no previous convictions they were not sent to prison. It was, therefore, less than fair to have awarded the appellant such a long period of imprisonment even though his record was tarnished. He has now been in custody for between 2 and 3 months, which is more than enough, and we reduce his sentence to such an amount as will enable him to be released upon the morrow.

*Order accordingly.*

The appellant was absent and unrepresented.

For the respondent:

*DW Karanja* (State Counsel)