



Kioro v Republic (Miscellaneous Criminal Application E029 of 2024) [2024] KEHC 9696 (KLR) (29 July 2024) (Ruling)

Neutral citation: [2024] KEHC 9696 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
MISCELLANEOUS CRIMINAL APPLICATION E029 OF 2024**

RB NGETICH, J

JULY 29, 2024

BETWEEN

ERICK KIORO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Erick Kioro was charged with the offence of Burglary contrary to section 304(2) and Stealing contrary to section 279(b) of the *Penal Code*. The particulars were that the Applicant on the night of 11th day of December, 2023 at unknown time of the night at Kolowa centre, Tiaty west sub-county within Baringo County broke and entered a shop and stole (1) Ten litres of cooking oil (2) Six packets of 1Kg wheat Flour (3) three Kilograms of sugar, (4) Ten packets of 250 grams Tea leaves valued at Kshs.4630/= the property of Sheila Cheboi Soi.
2. The Applicant faced an alternative charge of handling stolen goods contrary to section 322(1) (2) of the *Penal Code*. Particulars were that the accused on the day of 11th day of December, 2023 at around 1400hours at Koloa centre, Tiaty West Sub- County within Baringo County otherwise in the course of stealing, dishonestly retained (1) one and half Kilograms type softie Baking flour (2)500mls of cooking oil valued at Kshs.380/= property of Sheila Cheboi soi knowing or having reason to believe it to be stolen goods.
3. The Applicant pleaded guilty to the charge when he first appeared in court on the 14th December,2023 but changed his plea on the 12th February, 2014 and the facts were read over to him. He admitted the charge and he was convicted on his own plea of guilty. On 11th March,2024, he was sentenced to serve 2 years imprisonment for the offence of Burglary and 2 years in jail for the offence of Stealing, the sentences were to run concurrently.



4. The Applicant now seeks to serve the remaining term of his sentence on a non-custodial sentence. The Application is supported by the annexed affidavit sworn by the applicant. He avers that he is the sole bread winner of his family and that he has reformed/rehabilitated and is repentant. He states that he is remorseful of the offence.
5. When the matter came up for hearing on the 10th July,2024, the prosecution counsel Ms. Ratemo urged this court to call for social inquiry which was filed on the 6th July,2024. From the report, the applicant has a brother Haron Yego who is also in prison for the offence of being found in possession of a stolen Television.The applicant's sister is willing to support reintegration of the applicant into the community.
6. From the report, the applicant dropped out of school in form 3 and worked as a herder up to the year 2000 when he started engaging in casual labor up to the year 2008. In 2008 he begun working as a bodaboda rider using a motorcycle owned by his uncle up to 2015 when he developing chest complications. He has learnt motorcycle mechanic through apprenticeship and he started working as a motorcycle mechanic in Kolowa from 2015 up to the time of his arrest.
7. The Applicant is married with three children. He had married a second wife but they separated before getting children. He admits to sealing the items and blames his actions on hunger. He says he has learnt his lesson and now knows the importance of relying on his work to earn a decent living other than stealing. He prays for a non-custodial sentence for the remainder of his prison term and promises to work as a motorcycle mechanic so as to earn a living if released.
8. The local administration both the chief and assistant chief were interviewed and they indicated that the applicant had been a troublesome person within the locality with previous instances where he had been arrested as a suspect of being in possession of a firearm and murder but he was not arraigned in court. They propose that he completes incarceration as it has acted as deterrent to other members of the community and therefore they believe if he is let to complete his sentence in prison it will further deter others from engaging in crime.
9. Efforts to reach the victim through the local administration and the family of the inmate proved futile.
10. From the report the applicant is due for release on the 14th of April 2024 and therefore has about 10 months to the completion of his sentence.
11. The applicant's family pray for release of the applicant but none of them committed to assist in his reintegration back into the community and to assist in his further rehabilitation.

Determination

12. This application invokes the revisional jurisdiction of this court which gives the court powers, in appropriate cases, to review and vary any orders, decision or sentence passed by the trial court if the court was satisfied that the impugned order, decision or sentence was illegal or was a product of an error or impropriety on the part of the trial court. If the court was so satisfied, the law mandates it to make appropriate orders to correct the impugned order, decision or sentence and align it with the law. The above is the import of Section 362 as read with Section 364.
13. I have considered sentiments by the local administration. They say the applicant has been troublesome in the community and they are of the view that letting him complete sentence in prison will deter other would be offenders in the community. I also note that the family of the applicant have not committed to supporting reintegration of applicant to community.



14. The objectives of sentencing are outlined in the 2023 [Judiciary of Kenya Sentencing Policy Guidelines](#) at page 15, paragraph 4.1 as follows:-

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

Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.

Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.

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.

Community protection: To protect the community by incapacitating the offender.

Denunciation: To communicate the community's condemnation of the criminal conduct.”

15. Considering sentiment by the local administration, there is need to demonstrate to community that acts by the applicant ought to be condemned and there is need to protect the community from criminal activities. In my view, the applicant should complete his sentence in prison so as to send a message of denunciation of criminal acts to the community.

16. Final orders: -

1. Application for review of sentence is dismissed.
2. Period served in remand to be computed in the sentence imposed by trial court.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 29TH DAY OF JULY 2024.

.....
RACHEL NGETICH
JUDGE

In the presence of:

* CA Elvis

* Ms. Ratemo

* Applicant present

