



**Kemboi alias Mohammed v Republic (Criminal Revision E060 of 2024)
[2024] KEHC 14706 (KLR) (22 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14706 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL REVISION E060 OF 2024
RB NGETICH, J
NOVEMBER 22, 2024**

BETWEEN

EMMANUEL KEMBOI ALIAS MOHAMMED APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein was charged with the offence of stealing by servant contrary to section 281 of the penal code. The particulars were that the accused on the 21st day of February, 2022 at around 1900Hrs in Marigat Township, Marigat Location Baringo South Sub- County within Baringo County, being a servant of Abdinassir Mohammed Aden, stole Kshs. 31,240/= the property of Abdinassir Mohammed Aden which came into possession by virtue of his employment.
2. The accused pleaded guilty to the charge and was convicted on his own plea of guilty. The Prosecution informed the court that the accused has previous criminal records where he was sentenced to one-year probation in criminal case No. 597 of 2021 and had also been charged in criminal case No. 587 of 2021 where the matter was withdrawn under Section 87(a) of the CPC.
3. In his mitigation, the applicant prayed for forgiveness and stated that he had received a call informing him that his mother was sick and he went for collection and used the money. The court called for presentence report which indicated that the applicant was not suitable for non-custodial sentence and home environment is not conducive for rehabilitation. The court proceeded to sentence the accused to serve five (5) years imprisonment.
4. Dissatisfied with the sentence of the trial court, the Applicant approached this court *vide* Kabarnet H.C Criminal Revision No. E082 of 2023 seeking for sentence review. This court delivered its ruling on the 5th day of March, 2024 declining prayer for review and indicated that the court may consider on its own motion at a later date. Reason for declining the application was that Applicant had served under



probation sentence before and that even though he completed satisfactorily, it seem non-custodial sentence did not help to reform him because he went back into crime again.

5. In the supporting affidavit herein, the Applicant avers that they have reconciled with the complainant and he begs this court to review the remaining sentence to non-custodial sentence. He states that he is the sole bread winner of his family and his family is suffering adversely now that the he is jail. He pledges to be a law-abiding citizen should his prayers be granted. When the matter came up for hearing on the 26th day of September, 2024, the applicant said he is now remaining with 15 months to serve. The court directed that a second social inquiry report to be filed.

Social Inquiry Report

6. The Applicant dropped out of school in standard seven in the year 2015 due to personal will and due to relocation to where the father and was not able to continue with his education. He started doing casual jobs within the community and got married in the year 2017 to his first wife who is currently at Qatar. He married his second wife in the year 2020 who is currently at her parents' home. They are blessed with one child aged 2 years. For the two years he has been in custody he has been able to acquire skills in wiring and mechanics but has not done examinations.
7. From the report the Applicant's father stated that his son has been troublesome for a while and his criminality is as a result of desire for quick money and negative peer influence. The father is however not opposed to his son's early release though he did not show any concern in resettlement and reintegration of the applicant stating that the applicant is an adult and should plan for his life. He expressed 'fear towards him saying he is of unpredictable character.
8. The Applicant's mother expressed willingness to stay with him and support him to train as a mechanic. The step-father is not opposed to Applicant's release though he states that his character is unpredictable in character and may disturb him with unreasonable demands.
9. Circumstances are that the Applicant was employed by the victim as a shop attendant and on the material day, he was sent to go and collect cash for good delivered to various shops. He collected the cash but did not return to the shop but instead boarded matatu and went to his home. The reason he gave is that his mother had a sickly baby who needed attention.
10. From the report, the victim visited the applicant in prison and they were able to reconcile. The victim wrote a letter confirming that he had forgiven the accused and is willing to reemploy him.
11. The local administration said the applicant has been troublesome within the community for a long period of time and his character is unpredicted and has mastered the offence of stealing. He however did not oppose release of the applicant stating that he has been in custody for about two years and he believes he has changed in character.

Determination

12. The application herein 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 mandated 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 of the *Criminal Procedure Code*.



13. 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 demand 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.”

14. I have considered sentiments given by the applicant’s parents, the local administration. There is confirmation that the victim has forgiven the applicant and is even willing to reemploy him. From the sentiments given, the applicant is now suitable to be reintegrated within the community.

Final Orders

15. Applicant to serve probation sentence for the remaining period

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 22ND DAY OF NOVEMBER 2024.

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RACHEL NGETICH

JUDGE

In the presence of:

CA Elvis

Ms. Ratemo for state

Applicant present

