



**Kimaru v Republic (Criminal Revision E057 of 2024)
[2024] KEHC 14714 (KLR) (22 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14714 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL REVISION E057 OF 2024
RB NGETICH, J
NOVEMBER 22, 2024**

BETWEEN

DENNIS CHERONO KIMARU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Dennis Cheron Kimaru 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 of the charge were that the accused on the 23rd day of November, 2023 at around 2300Hours at Chelaba village, Maji Ndege Sub-location, Lobo Location in Baringo South Sub- County within Baringo County jointly with others not before court broke and entered into a shop of Sylvia Sortich Chemursoi with intent to steal therein and did steal cash amounting to Kshs.700,000/=, the property of the said Sylvia Sortich Chemursoi.
2. The Applicant pleaded guilty to the charge and he was therefore convicted on his own plea of guilty. On the 21st December, 2023, the trial court called for presentence report and after considering sentenced the applicant to serve 5 years in jail.
3. The applicant has now approached this court seeking review of his sentence on ground that he is the only son in his family assisting his parents to pay school fees for his younger brothers and sisters and that he earns a living through casual labour.
4. When the matter came up for hearing on the 26th day of September, 2024, the applicant stated that he is remaining with 2 years.
5. The court directed that a social inquiry report to be filed.



Social Inquiry Report

6. The Applicant sat for KCPE and attained 287 marks out of 500 in the year 2021. He did not proceed to secondary school due to what he terms as lack of school fees as a result of the low economic ability of his parents. He later joined Baringo Technical College for a course in welding but he did not complete the course due to lack of fees. He then worked as a boda-boda rider and engaged in casual labor so as to earn a living. He is not married and does not have any parental responsibilities.
7. From the report, the Applicant's mother stated that as a parent she has tried all she could to correct the Applicant but he reoffends after a short period. She said being a single mother, she involved the inmate's uncle and grandfather to talk to the Applicant but the Applicant has not changed. She decried the fact that the inmate's behavior has led to her being in conflict with her neighbors and other members of the community and she fears for the safety of the Applicant if released and he reoffends, he may be subjected to mob justice. Her wish is for the applicant to complete sentence in prison so that he learns a skill which may enable him earn an honest living.
8. The applicant said that he was called by his friend to go for a job. He found out that the job was burglary but he still went ahead and participated on ground that he wanted quick money. He however admitted that this was not the first time he engaged in crime. He attributes the offence to negative peer influence and the desire to make quick money.
9. The victim indicated that the inmate had been a habitual thief with several cases of burglary. He would be arrested, charged in court and incarcerated but he never learnt his lesson and never changed his ways. She therefore believes he is not suitable for noncustodial sentence but should be left to complete his sentence as it was determined by the lower court.
10. The local administration indicated that the inmate is well known as a thief who has been arrested and charged in court severally but still never learns to change his ways. The assistant chief informed stated that the inmate was part of a gang that used to terrorize the locality and were viewed as threats to people's property. The other members of the gang were later arrested in Mogotio due to stock theft. Since the inmate and other members of the gang were incarcerated, the locality has had no cases of burglary, something that the locals are very happy about.
11. Furthermore, the local administration indicated that due to the fact that the inmate has been arrested and charged severally but is not changing, the members of the community are fed up with his behavior and chances are very high the inmate may be subjected to mob justice if he is caught breaking the law again. To this end, the local administration opposed the inmate being released to serve a non-custodial sentence or having his sentence reduced stating that the sentence is suitable enough to allow the inmate to learn a skill that he can rely on once released. They therefore prayed that the inmate completes his sentence as it is.
12. The probation officer finds that the inmate is not suitable to be released to serve a non-custodial sentence and he should complete his sentence in prison. This is subject to the discretion of this honorable court.

Determination

13. I have considered the application. I find that the 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 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*.

14. I have considered the mitigation by the Applicant. The Applicant has pleaded upon this court to grant him a non-custodial sentence. I have also considered the social inquiry report which is not favourable to the accused. From the report, it comes out clearly that the criminality of the Applicant is as a result of negative peers. His mother has tried talking to the inmate and involving other relatives but the inmate did not change his ways and his acts of crime have led to him being in conflict with the neighbours and other members of the community. The mother of the inmate prays that he completes his sentence in prison so that he can learn a skill he can rely on once released. The local administration and the victim opposed the applicant being released stating that the inmate is a threat to their property and social inquiry shows that the members of the community are fed up with the behavior of the inmate and there are chances of mob justice occurring if he is released and he commits another offence.
15. It comes out clearly that he was charged in court vide CR E435/2020 for Burglary and stealing and he was given a conditional discharge. He was later charged again vide CR E2098/2022 for Burglary and he was sentenced to serve 18 months in prison and the history of criminality has led to the community being hostile towards the Applicant since he has refused to change his ways.
16. 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."

17. Having considered the social inquiry report, specifically the sentiments of the mother of the applicant, the victim and that of the local administration, I find that the Applicant is not suitable for a non-custodial sentence. From the report, the applicant is a repeat offender and is not suitable for community based rehabilitation. The application for review is hereby declined.
18. Final Ordrs:-
Application declined.

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

