



REPUBLIC OF KENYA



**KENYA LAW**  
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**Karanu v Republic (Criminal Revision E223 of 2022)  
[2023] KEHC 2519 (KLR) (24 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2519 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
CRIMINAL REVISION E223 OF 2022  
GL NZIOKA, J  
MARCH 24, 2023**

**BETWEEN**

**NELSON MANDELA KARANU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was arraigned before the Senior Principal Magistrate's Court at Engineer charged *vide* Criminal Case No. E117 of 2022, with the offence of; house breaking contrary to section 304 (1) (b) and stealing contrary to section 279 (b) of the *Penal Code*. The particulars of the charge are as per the charge sheet.
2. He pleaded not guilty and the case was heard fully. At the conclusion of the trial he was found guilty, convicted and sentenced to serve seven (7) years imprisonment.
3. He now seeks for review of the sentence vide an application filed on December 14, 2022. The application is supported by his affidavit, and a document labelled; "the memorandum of sentence review". He also relies on his submissions. He avers that is a first offender, remorseful and rehabilitated. That he has undertaken several bible courses and gained skills in domestic animal farming and crop farming.
4. Further, he is from a poor family background, his mother is ill and his wife is jobless. That he has a child of two years old. Further he has no pending appeal and is applying for review of his sentence.
5. The Respondent has not responded to the application despite being granted an opportunity to do so and therefore the application is unopposed.
6. The court ordered for and the Probation Department filed a report dated; March 13, 2023, which indicates the applicant's father is deceased while his mother depends on casual jobs. He is 32 years and



has five (5) siblings. That he is not married and does not have children. He dropped out of school in class 5 due to a lack of interest and was doing casual work at a quarry before his arrest. That he admitted to using bhang.

7. Further he is remorseful and is willing to undergo rehabilitation programmes and prays for leniency. His mother states that the family has a positive relationship with him and is willing to assist him resettle. The community views were given by the “investigating officer” who gave positive report and states that the applicant is not a threat to the community if released. The complainant on his part stated that he lost Kshs. 30,000. and his project notes but has no objection if the applicant is released.
8. Further, the Prison authority stated that, he is deployed to the carpentry section at Prison, is well behaved and disciplined and that the prison authorities recommend he be released on a non-custodial sentence and further supervision. The Probation officer recommends that he be placed on community service for one (1) year to be performed at the DCC’s compound at Ol Kalau and that the department will accord him the necessary resettlement and reintegration plan.
9. In considering application, I note that the revisionary power of the High Court is provided for under sections 362 of the *Criminal Procedure Code* (herein “the Code”), which states as follows:

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

10. However, the section should be read together with section 364 of the *Code* which states as follow: -

- (1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may—
  - (a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;
  - (b) in the case of any other order other than an order of acquittal, alter or reverse the order.
- (2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence: Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.
- (3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.
- (4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.



- (5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.”
11. It is therefore clear from the above provisions that, the court will only exercise its revisionary powers where, the impugned sentence is either incorrect, illegal or improper. Thus the objective of revisionary jurisdiction is to set right a patent defect or error of jurisdiction or law. This jurisdiction will only be invoked where the decision under challenge is; grossly onerous, there is no compliance with the provisions of the law, or the finding re-ordered are based on no evidence, or material evidence is ignored or judicial discretion is exercised arbitrarily or perversely.
12. As such it is not the responsibility of the High Court to take into account the benefit of the evidence, it merely has to see if the provisions of the law have been properly adhered to by the court whose order is the subject of the revision, as held in; *Major S.S Khanna vs Brig F.J Dillon* 1964 AIR 497, 1964 SCR (4) 409).
13. In the instant matter, the applicant was convicted of the offence under section 304 (1) (b) of the [Penal Code](#) that states:
- “ Any person who—
- (b) having entered any building, tent or vessel used as a human dwelling with intent to commit a felony therein, or having committed a felony in any such building, tent or vessel, breaks out thereof, is guilty of the felony termed housebreaking and is liable to imprisonment for seven years.
14. Further the aforesaid section should be read with section 279 of the [Penal Code](#) which states: -
- “ If the theft is committed under any of the circumstances following, that is to say —
- (b) if the thing is stolen in a dwelling-house, and its value exceeds one hundred shillings, or the offender at or immediately before or after the time of stealing uses or threatens to use violence to any person in the dwelling-house;
- the offender is liable to imprisonment for fourteen years.
15. Pursuant to the aforesaid the sentence of seven years is lawful and legal and indeed it must be appreciated the heavy penalty provided speaks to the seriousness of the offence.
16. In sentencing the applicant, the Hon. trial magistrate noted he was not remorseful. However, the applicant was treated as a first offender. As such a sentence meted out to a first offender should accord him an opportunity to reform. The sentence herein of seven (7) years therefore is too harsh, even when compared to the value of the subject matter, being Kshs 32, 090.
17. The pre-sentence report is positive. However the community service order applies to a sentence of three (3) years and below. I therefore order the sentence be revised from seven (7) years imprisonment to two (2) years imprisonment with effect from, September 22, 2022 date of arraignment in court.
18. It is so ordered.

**DATED, DELIVERED AND SIGNED ON THIS 24<sup>TH</sup> DAY OF MARCH 2023**

**GRACE L. NZIOKA**



## **JUDGE**

### **In the presence of:**

Appellant present in person, in court virtually

Mr. Atika for the Respondent

Ms Ogutu: Court Assistant

