



**Maina v Republic (Criminal Revision E028 of 2023)
[2023] KEHC 2279 (KLR) (24 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2279 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL REVISION E028 OF 2023
GL NZIOKA, J
MARCH 24, 2023**

BETWEEN

JOHN MAINA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was arraigned before the Senior Principal Magistrate’s Court at Engineer charged *vide* Criminal Case No E1294 of 2022, with the offence of breaking into a building and committing a felony contrary to section 306 (a) of the *Penal Code*. He was further charged with an alternative offence of handling stolen good contrary to section 322 (1) (2) of the *Penal Code*. The particulars of each charge are as per the charge sheet.
2. He pleaded guilty, was convicted and sentenced on the main count to a term of three (3) years imprisonment. He now seeks for review of that sentence through the application herein February 28, 2023.
3. The application is supported by the grounds in the document entitled “memorandum of sentence review” and applicant’s affidavit where he avers that he is a first offender and he pleaded guilty. That he is remorseful, rehabilitated, has learnt to be a law abiding citizen and can live harmoniously with the community. That he is from a poor family background with a promising career and prays for pardon and that the court considers the time served so far.
4. The respondent did not respond to the application despite being granted an opportunity to do so, therefore the application is unopposed.
5. The pre-sentence report dated; September 27, 2022 filed in the trial court that indicates the applicant’s parents are alive and carry out subsistence farming on their 1 ½ acres farm at Oleliondo. He is 30 years old and the 3rd born out of seven (5) siblings.



6. That he dropped out of primary school in class 7 due to truancy and bad behaviour and worked in a car wash in Gilgil before relocating to Eldoret where he worked as a mechanic. The family members and the local administration refuted his claim that he has a fixed place of abode and indicated he returns to Ol Kalau after committing an offence.
7. That he is not remorseful as he justified the offence attributing it to the nature of his work as a broker. His father described him as a habitual thief who steals from the family and the community. That he takes drugs and associates with criminals. Further they have tried to rehabilitate him but in vain. The family members' disassociated themselves with him and want him to serve a custodial sentence.
8. The complainant stated that the applicant stole from him frequently and is opposed to a non-custodial sentence. The village elder and the chief similarly described him as a habitual thief within the community and that the community were angered with his behaviour and were against a non-custodial sentence.
9. The probation officer noted that the applicant feigned remorse to sway the court and was untruthful as he gave misleading information on his family and recommends the applicant serve a custodial sentence. The revisionary power of the High Court is provided for under sections 362 of the [Criminal Procedure 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. The applicant was convicted of the offence under section 306 (a) of the [Penal Code](#) which states: -

Any person who—

 - (a) breaks and enters a schoolhouse, shop, warehouse, store, office, counting-house, garage, pavilion, club, factory or workshop, or any building belonging to a public body, or any building or part of a building licensed for the sale of intoxicating liquor, or a building which is adjacent to a dwelling-house and occupied with it but is not part of it, or any building used as a place of worship, and commits a felony therein;

is guilty of a felony and is liable to imprisonment for seven years.
11. As such the three (3) years sentence is lawful. The pre-sentence report is extremely negative and therefore there is no reason to interfere with the sentence meted out. The application is therefore dismissed for lack of merit.
12. It is so ordered

DATED, DELIVERED AND SIGNED ON THIS 24TH 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

