



**Kibichi v Republic (Criminal Revision E001 of 2023)  
[2023] KEHC 20929 (KLR) (27 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20929 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDAMA RAVINE  
CRIMINAL REVISION E001 OF 2023  
RB NGETICH, J  
JULY 27, 2023**

**BETWEEN**

**EVANS KIBICHI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

**BACKGROUND**

1. The Applicant was charged in Eldama Ravine Principal Magistrate's court Criminal Case No E452 of 2020 with the offence of burglary and stealing contrary to Section 304 (1) (b) as read with Section 304(2) of the [Penal code](#). The applicant was tried, convicted and sentenced to serve seven years imprisonment on December 2, 2020.
2. The Applicant has now filed an application for the review of the sentence invoking the provisions of section 363 as read with 364 of the [Criminal procedure code](#). He urges court to reduce the sentence to non-custodial sentence.
3. The application is supported by the affidavit of the applicant. He avers that he was charged for the offence of burglary and stealing contrary to section 304(1)(b) as read with section 304(2) of the [Penal code](#) in the Principal Magistrates court at Eldama Ravine criminal case No E452 of 2020; was convicted and sentenced to serve seven years imprisonment on December 2, 2020.
4. The applicant avers that he was a first offender and the sole breadwinner to his young family; that he is remorseful of the offence committed and greatly regrets having committed the said offence; and at the time of the commission of the offence, he was of tender age of eighteen years.
5. He further states that the sentence imposed by the trial court was excessive based on the circumstances and this Honourable court has a wide and unlimited original jurisdiction and discretionary powers to



deal with all issues raised herein. He prayed for grant prayers herein for the interest of justice; he prayed for lenient sentence or a non-custodial sentence.

6. On the July 6, 2023 when the matter came up for mention, the court called for probation officers report to be prepared. The report was filed on July 12, 2023.

### **Probation officer's report**

7. From the report, the applicant has done several courses while in custody though he has not done any examination. He has skills in carpentry, tailoring and barbering and he personally indicates that he is good at barbering.
8. I note that the victim is opposed to the applicant's sentence being reduced on ground that he is troublesome youth who needs to complete his custodial sentence.
9. The local administration and the villagers indicated that the applicant is well known as one of the troublesome youths within the community. They added that the applicant's habit of stealing is due to need for quick money without participating in any economic activities within the community. They opposed the applicant being released on a non-custodial sentence stating that the community is still bitter with him and for his own safety they prefer him to continue serving his custodial sentence.
10. The applicant's family prays that he be released earlier so that they can assist them with farming activities at the family land and they are willing to facilitate his reintegration within the community.
11. The applicant deeply regrets his actions, he takes the sentence positively and prays for a chance to complete the remaining part of sentence within the community to enable him re-unite with his family and continue practicing barber work. He is willing to abide to the conditions of the community rehabilitation and not to reoffend again.
12. The probation officer recommends that going by the negative sentiments from the local administration and the victim and for the applicant's own safety, they recommend that the inmate continue serving his sentence, however this is subject to court's discretion.

### **Analysis and determination**

13. I have considered the application and the oral submissions made by Applicant wish to whether there are sufficient grounds to revise the sentence imposed by the trial court.
14. The provisions of section 364 (1) of the CPC vests in this court powers to revise sentence. Under Article 165 (6) and (7) of the Constitution the court has discretion to revise sentence. Revision jurisdiction of the court can be set in motion by the court suo motu, even on information provided by the aggrieved party who had the right of Appeal but did not Appeal. see the cases of *R v Ajit Singh* [1957] EA 822 and *Walome v R* [1981] KLR 497.
15. The applicant herein was convicted of the offence of burglary and stealing contrary to Section 304 (1) (b) as read with Section 304(2) of the Penal Code and sentenced to serve seven years imprisonment.
16. The applicant is urging this court to consider his mitigation circumstances and the period that he has been in prison to arrive an appropriate decision in his favour. He is requesting that the sentence be reduced or he be placed on a non-custodial sentence; he is pleading with the court to consider his mitigation circumstances and the period that he has been in prison to arrive an appropriate decision in his favour. There is no doubt that the applicant has reformed.



17. While in prison, he has been equipped with skills which will help him engage in activities beneficial to him, his family and the community. The objective of correctional facilities is to reform and rehabilitate convicts and once reformed, they should be integrated to the society; they should be given a chance to make contribution in the society. I take note of the fact that he was young at the time of offence and he had no skills to earn a living; that is what may have caused him to engage in the offence herein. In my view, now that he has acquired useful skills which will assist him earn a living, he should be given a second chance. I am inclined to reduce sentence to non-custodial sentence

18. **FINAL ORDERS: -**

Accused to serve 2 years probation sentence.

**RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KABARNET**

**THIS 27<sup>TH</sup> DAY OF JULY 2023.**

.....

**RACHEL NGETICH**

**JUDGE**

**In the presence of:**

Mr. Kemboi - Court Assistant.

Ms Ratemo for state.

Applicant present.

