



REPUBLIC OF KENYA



**Kosgei v Republic (Revision Case E080 of 2023)
[2023] KEHC 22132 (KLR) (22 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 22132 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
REVISION CASE E080 OF 2023
HM NYAGA, J
AUGUST 22, 2023**

BETWEEN

REUBEN CHERUIYOT KOSGEI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This matter has been brought to me under the Prison Decongestion Exercise been undertaken by this court.
2. The Applicant, Reuben Cheruiyot Kosgei was charged and convicted on five counts of burglary contrary to section 304 (2) and stealing contrary to section 279 (b) of the *Penal Code*. On 18th April, 2023 he was sentenced to pay a fine of Kshs 40,000/= and in default to serve 6 months' imprisonment on each count. The sentences were to run concurrently. In law a custodial sentence served in default of a fine ought to run consecutively, not concurrently. Therefore the trial court erred in ordering that the sentences run concurrently. The cumulative sentences add up to 30 months. However this does not bar this court from exercising its powers of revision.
3. The applicant has so far served about 5 months in prison.
4. According to the Sentence Review Report filed on 2nd August 2023, the Community Service Officer, Julia Isomi recommends Community Service.
5. The report further states that inmate is a class 7 drop out and has doing casual work at the time of the offence. He is a first time offender and his home environment is conducive for his return.
6. The prison officers stated that he is well behaved and that he has not gained any skills in any field due to his short period in prison.



7. The applicant is remorseful and pleads for leniency and willing to serve a non-custodial sentence if granted.
8. In light of the above and with the view to decongest the prison, I hereby exercise judicial discretion and order the Convict/Applicant be released from prison forthwith and be placed on Community Service at Kabangoi Chief's Camp for 15 months. He shall be closely supervised by the chief Mator Location who shall ensure the convict religiously performs any assigned community service to his satisfaction and weekly reports made to the Probation Officer, Molo who shall monitor the behaviour of the convict for the remainder of the sentence.
9. The applicant is, as required, made aware that in the event of a breach, the CSO order shall be revoked and he shall be returned to prison to serve the entire prison term imposed and not served.
10. File closed.

DATED, SIGNED & DELIVERED AT NAKURU THIS 22ND AUGUST, 2023.

H.M. NYAGA

JUDGE

In the presence of:

C/A Jeniffer

Ms Murunga for state

Applicant

