



**Kibera v Republic (Criminal Revision E232 of 2022)
[2023] KEHC 21682 (KLR) (Crim) (10 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21682 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL REVISION E232 OF 2022**

LN MUTENDE, J

AUGUST 10, 2023

BETWEEN

KENNEDY KIRATU KIBERA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Kennedy Kiratu Kibera, the Applicant, was charged with the offence of Malicious Damage of Property Contrary to Section 339(1) of the *Penal Code*. Particulars of the offence being that he damaged a water pump system valued at Kenya Shillings Seven Thousand Five Hundred, (Ksh. 7,500) being the property of James Kibera Kiratu.
2. Upon arraignment he admitted having committed the offence at the outset, and, was convicted accordingly. In mitigation, he stated that he committed the act but subsequently met repair expenses. He pleaded for leniency urging that he had a week-old baby.
3. In an application dated 2nd August, 2022, filed herein on 19th September, 2022 he seeks review on grounds that the court failed to consider a non-custodial sentence. That he has reformed, his wife depends on him and having been diagnosed with acute anaemia in 2016, he requires special diet that is not available in prison.
4. The application is unopposed.
5. The power of the High Court for revision is provided by the Statute. Section 362 of the *Criminal Procedure Code* provides thus;

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 subordinate court.

6. In determining the matter at hand this court would be inquiring into the correctness, legality and propriety of the sentence meted out by the Superior Court.
7. The applicant offended the law by contravening section 339(1) of the penal code which provides thus;

“Any person who willfully and unlawfully destroys or damages any property is guilty of an offence, which, unless otherwise stated, is a misdemeanor, and is liable, if no other punishment is provided, to imprisonment for five years”
8. Prior to the trial court passing the sentence, it sought an input of the probation department that carried out a social inquiry in that regard and it was established that the applicant was the only son of the complainant who abuses hard drugs that triggered the action. The report filed was not favourable as his own parents were not willing to assist him in rehabilitation. A deterrent sentence was called for.
9. The foregoing establish that the trial court acted within the law. There was no irregularity that would call for revision of the sentence.
10. That notwithstanding, following this courts wide supervisory power, I did call for another report. Following the inquiry carried out, his family is now desirous to assist in his rehabilitation and reintegration. It is indicated that he has gone through guiding and counselling in prison and he has also learnt carpentry and welding.
11. Considering the fact that the applicant has spent one (1) year in prison, in the interest of justice and the spirit of decongesting prisons, the application is allowed. The offender shall be released to be under Probation Supervision for a period of Six (6)months. He will be supervised by the Milimani High Court Probation Officer.
12. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI, THIS 10TH DAY OF AUGUST, 2023.

L. N. MUTENDE

JUDGE

IN THE PRESENCE OF:

Mr, Kiragu for DPP

C/A Mutai

