



**Mungai v Republic (Miscellaneous Criminal Application
E026 of 2020) [2022] KEHC 11820 (KLR) (31 March 2022) (Ruling)**

Neutral citation: [2022] KEHC 11820 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
MISCELLANEOUS CRIMINAL APPLICATION E026 OF 2020
GWN MACHARIA, J
MARCH 31, 2022**

BETWEEN

JAMES KARANJA MUNGAI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein prays that his sentence be reviewed and that the same be substituted with a non-custodial sentence. The same is premised on a Notice of Motion filed on 28th December, 2020 and supported by a self-sworn affidavit.
2. The respondent, represented by learned state counsel Ms. Maingi had no objection.
3. The applicant was charged at Engineer Law Courts in Criminal Case No 898 of 2019 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 offence were that on the 8th day of September, 2019 at Gitwei Area in Kipipiri Sub County within Nyandarua County, jointly with others not before court, broke and entered into a building used as a dwelling house by Lucy Wangui Kahuri and stole the items named in the attached list valued at Kshs 30,000, the property of the said Lucy Wangui Kahuri.
4. In the alternative, he was charged with handling stolen goods in that on the 17th day of September, 2019 at Miharati area in Kipipiri Sub-county within Nyandarua County, otherwise than in the course of stealing retained two empty trays knowing them to be stolen goods.
5. The applicant was convicted of the main charge. He was sentenced to serve 4 years' imprisonment on January 23, 2020.
6. Before this court, the applicant pleaded that he was remorseful and that prior to his conviction, he had been in remand custody for a period of 25 months. He submitted that he only had 7 months to



complete his sentence. Further, that he had done Bible Studies and would be of help to many people spiritually. Additionally, he was young, being 24 years old and pleaded with the court to accord him an opportunity to go back to school.

7. I have had a look at the original trial court file. This is a case in which the applicant is aid to have stolen household goods worth Kshs 30,000. He was a first offender. The court should have taken into account some of the circumstances that lead the youth into crime majorly being unemployment. All these circumstances ought to have inclined to a lesser sentence preferably a non-custodial one. In view therefore, taking into account that the applicant has since his conviction been in custody for a period of 2 years and 3 months, plus the months he was in remand prior to sentencing, mean that he has served sufficient sentence.
8. Accordingly, I find that the application is merited. I find that the applicant has served sufficient sentence. i set aside the remaining jail term and order that theapplicant be forthwith set free unless otherwise lawfully held.
9. It is so ordered.

DATED AND DELIVERED THIS 31ST DAY OF MARCH, 2022.

G. W. NGENYE-MACHARIA

JUDGE

In the presence of: -

1. Applicant in person.
2. Ms. Maingi for the Respondent.

