



REPUBLIC OF KENYA



**Wamboya v Republic (Criminal Revision E003 of 2022)
[2022] KEHC 396 (KLR) (21 April 2022) (Ruling)**

Neutral citation: [2022] KEHC 396 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL REVISION E003 OF 2022**

**RE ABURILI, J
APRIL 21, 2022**

BETWEEN

EMMANUEL OWINO WAMBOYA APPLICANT

AND

REPUBLIC RESPONDENT

*(An Application seeking sentence revision of sentence arising from Judgment,
Conviction and sentence in PM's Bondo Criminal Case No. E1139 of 2021)*

RULING

1. I have considered the application dated 4/4/2022 seeking for revision of sentence of 7 years imprisonment imposed on the applicant herein upon being convicted on his own plea of guilty for the offence of preparation to commit a felony contrary to section 308(1) of the [Penal Code](#).
2. The applicant now seeks for revision of sentence, being a first offender and that he is the sole breadwinner for his parents who rely on him although he had lied to court in his mitigation that he was an orphan.
3. He also asks this court to consider fining him instead of a custodial sentence as imposed.
4. I have perused the grounds for Sentence Revision and the provisions of Sections 362-364 of the [Criminal Procedure Code](#). I am not persuaded that the applicant deserves the orders sought. This is so because the sentence imposed is lawful and there are no irregularities or impropriety in the proceedings leading to the conviction and sentencing of the applicant.
5. The offence of preparation to commit a felony under Section 308(1) of Penal Code carries upto fifteen (15) years imprisonment, upon conviction.
6. The applicant, from the facts read out to court, was found in the process of breaking into the complainant's shop. He was armed and the hour was wee - 3.00 am. Although he claims that he is not



challenging the sentence and is only praying for a lesser sentence, a non custodial one, and is said to be remorseful, I am unable to appreciate that a person who arms himself at 3 am and in the company of others proceeds to break a locked premises with the intention of committing a felony had reformed over a period of 7 months that he has been in prison, out of the 7 years imprisonment meted out on him.

7. In addition, the convict was given the opportunity to mitigate and what he did, from the trial record, was to lie that he was an orphan only for him now to change and say that he has parents who solely rely on him as a bodaboda rider to support them.
8. The facts as read out to the accused disclosed an offence. I find no reason to interfere with the lenient sentence imposed and out of which the convict has only served seven (7) months.
9. The application for sentence revision is hereby dismissed.
10. File closed.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 21ST DAY OF APRIL, 2022

R.E. ABURILI

JUDGE

