



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KABARNET
CRIMINAL REVISION NO. E098 OF 2024

BRIAN KIPROTICH.....APPLICANT

- V E R S U S -

REPUBLIC.....RESPONDENT

RULING

1. The Applicant **BRIAN KIPROTICH** was charged with the offence of **Shop Breaking and committing** a felony contrary to **Section 306(a) (b)** of the Penal Code. The particulars of the charge were that the accused on the night of 10th and 11th of December 2022, at Kabarnet Township in Baringo Central Sub-County within Baringo County, jointly with others not before court, broke and entered into a building namely Express Mobile shop belonging to Alice Mutuku and committed therein a Felony namely stealing and did steal from therein (2) two Techno pop 6 smart phones, Four(4) Infinix Smart 6 smart phones, Two (2)Pop2 f smart phones, Ten (10) button mobile phones, one (1) Itel 2160 and Itel 2163, one(1) Mpesa Simcard and its mobile Phone make Huawei y360 and cash of Kshs.100,000/- all valued at Kshs.200,600/=.

2. The alternative charge was the offence of **Handling stolen goods contrary to Section 322(1)(2)** of the Penal Code. The particulars of the charge were that the applicant on diverse dates between 12th day of December, 2022 and 28th day of 2022 dishonestly retained one mobile phone make Itel of IMEI NO.351396632065329 knowing or having reason to believe them to be stolen goods.
3. The Applicant denied the charge and the matter was set down for full trial. Upon conclusion of the matter, the trial court found the applicant guilty of shop breaking and committing a felony contrary to Section 306(a) of the Penal Code and convicted him accordingly. On the 28th November 2023, the applicant was sentenced to serve 3 years imprisonment.
4. The applicant has now approached this court seeking review of his remaining sentence to a non-custodial sentence on the grounds the sentence imposed by the trial court was harsh, that he is remorseful of what transpired that fateful date, he is a first offender and given a second chance, he promises to be an upright law-abiding citizen. He states that he has young siblings who entirely depend on him and while in prison he has acquired a number of skills which he can use to sustain his basic needs. When the matter came up for hearing on the 13th November 2024, the Applicant prayed for probation sentence and that he is

now remaining with 5 months. The court directed that a social inquiry report to be filed.

SOCIAL INQUIRY REPORT

5. From the report, the Applicant had formal education up to form 4 at Saos boys' secondary school 2019 where he attained a mean grade of C- (minus). After that he started working as a casual laborer at Jopen stores until the point of his arrest. He is not married and he does not have any children. His father is a prison warden in Nakuru and the mother is a shop owner in Kapkut. The family has no previous history of criminality. The Applicant's family are ready to welcome the Applicant back home and assist in his reintegration back into the community. They will further help him to utilize his skills learnt in prison so as to earn an honest living.
6. Circumstances of this case are that the applicant was found with one of the phones that were stolen from the shop of the complainant. He could not explain how the phone came into his possession neither could he prove that he purchased it and he was therefore charged with the offence before court. During trial, the victim was willing to negotiate for compensation but the Applicant was not keen on this and he therefore ended up being imprisoned.

7. The Applicant prays to be released on a non-custodial sentence and he states that he is ready to perform community service. He indicates that he has reformed and that while in prison, he undertook a course in Upholstery grade III although he is yet to sit the examinations. He adds that upon his release he will be law abiding and follow the conditions of the order.
8. The victim stated that she wanted compensation for the stolen items and since she and the offender's cousin had talked about it but the offender's family did not commit themselves to compensate her, she is opposed to the Applicant's prayer for review of sentence.
9. The local administration indicated that the Applicant had been a habitual thief and they believe it was due to negative peer influence. However, considering the length of time the Applicant has spent in prison and the time he has left, they do not oppose his release to serve a non-custodial sentence.

DETERMINATION

10. The application herein invokes the revisional jurisdiction of this court which gives the court powers, in appropriate cases, to review and vary any orders, decision or sentence passed by the trial court if the court was satisfied that the impugned order, decision or sentence was illegal or was a product of an error or impropriety on the part of the trial court. If the court was so

satisfied, the law mandates it to make appropriate orders to correct the impugned order, decision or sentence and align it with the law. The above is the import of **Section 362** as read with Section 364 of the Criminal Procedure Code.

11. The applicant herein prays to be allowed to serve the remaining 4 months under probation. He says he has reformed and has also done training on upholstery which he will put into use to earn a living. The local administration is not opposed to his release as they believe while in prison, the applicant has learnt a lesson. The victim is however opposed to applicant's release on ground that he has been reluctant to compensate her.
12. The objectives of sentencing are outlined in the 2023 Judiciary of Kenya Sentencing Policy Guidelines at page 15, paragraph 4.1 as follows:-
 - Retribution:** To punish the offender for his/her criminal conduct in a just manner.
 - Deterrence:** To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
 - Rehabilitation:** To enable the offender reform from his criminal disposition and become a law-abiding person.
 - Restorative justice:** To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demand that these are met.

Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.

Community protection: To protect the community by incapacitating the offender.

Denunciation: To communicate the community's condemnation of the criminal conduct."

13. I have considered sentiments given by the local administration, the victim and the family of the applicant. I take note of the fact that the applicant has not made attempts to compensate the applicant. The applicant has not also sat for examinations for upholstery course he is undertaking in prison. Upon taking the above into consideration, I am inclined to decline the applicant's prayer for review of sentence so as to allow the applicant sit for examinations and also make arrangements to compensate the complainant.

14. **FINAL ORDERS:** -

- 1) The application for review of sentence is hereby declined.
- 2) The applicant may renew his application after sitting examination in prison and upon making arrangements to compensate the victim herein.

Ruling delivered, dated and signed virtually at Kabarnet this **5th Day of March 2025.**

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RACHEL NGETICH
JUDGE

In the presence of:

- Ms. Bartilol for State.
- Applicant present.
- Court Assistants – Elvis/Momanyi

ORIGINAL