



REPUBLIC OF KENYA



KENYA LAW
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**Kemboi v Republic (Criminal Revision E007 of 2024)
[2024] KEHC 3033 (KLR) (14 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3033 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL REVISION E007 OF 2024
RB NGETICH, J
MARCH 14, 2024**

BETWEEN

KIBET KEMBOI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged with the offence of House breaking Contrary to Section 304(1) and stealing contrary to Section 279(b). The particulars were that the accused on the 14th day of February, 2022 at unknown time at Kaprogonya area in Baringo Central Sub- County within Baringo County, broke and entered the building used as a dwelling house by Paul Chelimo Malit and stole 1 TV make worth valued at Kshs.56,320/=, one Woofer valued at Kshs.7,000/=, one Decoder valued at Kshs.3,500/= and one Torch valued at Kshs.300/= all valued at Kshs. 67,120/= the property of Paul Chelimo Malit.
2. He faced an alternative charge of Handling stolen property contrary to section 322(1)(2) of the [Penal Code](#). The particulars were that the accused on the 14th day of February, 2022 at unknown time at Kaprogonya area of Baringo Central Sub- County within Baringo County otherwise than in the course of stealing dishonestly retained one TV Make worth Kshs. 56,320/= and one Decoder valued at Kshs. 3,500/= all valued at Kshs. 59,820/=, the properties of Paul Chelimo Malit having reasons to believe them to be stolen or unlawfully obtained.
3. The Applicant denied the charge and the case proceeded for full trial. By judgement delivered on the 13th December, 2022, the applicant was found guilty and convicted of the offence of house breaking Contrary to section 304(1)(b) and Stealing Contrary to Section 279(b) of the [Penal Code](#). On the 12th January, 2023 the applicant was sentenced to serve 6 years imprisonment and the sentence was to run from 16th February, 2022 when he was placed in remand pending trial.



4. The Applicant has approached this court seeking sentence review and the period of 12 months he stayed in custody awaiting trial be considered as part of the sentence in accordance with section 333(2) (b) of the *Criminal Procedure Code* and to serve a non-custodial sentence (probation) for the remaining part of the sentence on ground that he has a young family who depend on him and if given non-custodial sentence, he will be able to help them.
5. The prosecution submitted that they rely on the social inquiry report and that they have no objection to the time spend in custody to being considered by the court.
6. A social inquiry report revealed that the applicant's parents are separated and both have remarried; they were all available for interview. The mother did not oppose the inmate's prayers but she insisted the inmate should go and stay with the father. The father said that this is the second time the applicant is serving sentence having served 6 years and completed the sentence but never reformed. He said the applicant has been troublesome for a long period of time, that he does not respect him and he has been threatening him even when in custody and was of the view that he completes his sentence as he is at peace while he is away. He added that the applicant was drawn to criminality due to negative peers, desire to get quick money by stealing and use of drugs and alcohol.
7. From the report, the applicant had formal education at Kaptimbor Primary School where he dropped at standard five in the year 2010 due to family instability and his own personal will. After dropping out of school, he started doing casual jobs within the community like being a boda boda rider and Matatu turn boy. He was married but his wife went back to her parents' home in Barwessa. They are blessed with one child. The applicant is on special diet due to ulcers. While in prison he has undergone training in Carpentry grade 3 but yet to sit for the trade test.
8. The Applicant admit the offence and says he already has a skill in carpentry and prayed to be allowed to serve the remaining period out of prison so that he may utilize the skill as he supports his family.
9. The victim who was his neighbor said the applicant was known in the community as petty thief and says his character is always unpredictable because he has been threatening him and he would prefer he completes his sentence.
10. The local administration stated that the applicant has been troublesome for a while at the community level and attributed his conduct to poor parental guidance as his family is dysfunctional family. He said before arrest, the applicant had threatened his father severally. The father believes that the applicant's mother wants him released so that he can harass him, second family children and the second wife. He opposed to applicant being released for being a threat to them and their property.

Determination

11. The applicant herein seek revision of sentence so as to serve the remaining period while out of prison and for period served in remand to be considered Section 333 (2) of the *Criminal Procedure Code*. He said he was in remand for a period of 12 months. The prosecution is not opposed to period served in remand being considered in computation of sentence. On revision of sentence the prosecution said they rely on social inquiry report.
12. Record show that the period served by applicant in remand was not considered. I proceed to allow that limb of the application. In respect to revision of sentence, I take note of the fact that the applicant is a repeat offender and he has not completed carpentry training. The applicant having reoffended before and in view of the fact that the father is not ready to receive him back home and local administration are opposed to his early release to the community, I am of the view that it would not be appropriate to release the applicant now.



13. Final Orders:

1. I decline to revise the applicant's sentence.
2. Period served in remand to be computed in sentence imposed by trial court.

**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET
THIS 14TH DAY OF MARCH 2024.**

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RACHEL NGETICH

JUDGE

In the presence of:

Applicant present.

Ms Ratemo for State.

Elvis, Court Assistant.

