



**Kipsang v Republic (Criminal Appeal E008 of 2023)  
[2024] KEHC 2243 (KLR) (7 March 2024) (Sentence)**

Neutral citation: [2024] KEHC 2243 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITALE  
CRIMINAL APPEAL E008 OF 2023  
AC MRIMA, J  
MARCH 7, 2024**

**BETWEEN**

**GILBERT KIPSANG ..... APPELLANT**

**AND**

**REPUBLIC ..... STATE**

**SENTENCE**

1. On 25<sup>th</sup> January 2024, this Court rendered its judgment where it reduced the conviction from that of robbery with violence to simple robbery. On sentence, this Court called for a Probation Report to satisfy itself whether there was need to vary sentence.
2. A Probation Report dated 13<sup>th</sup> February 2024 was eventually filed.
3. This Court is well abreast of the principles on sentencing and the 2016 Judiciary of Kenya Sentencing Policy Guidelines. As stated by the Supreme Court of Kenya in *Francis Karioko Muruatetu & another v Republic* [2017] eKLR, despite their importance, the guidelines do not replace judicial discretion. This is what the Apex Court stated: -
 

(72) We wish to make it very clear that these guidelines in no way replace judicial discretion. They are advisory and not mandatory. They are geared to promoting consistency and transparency in sentencing hearings. They are also aimed at promoting public understanding of the sentencing process.
4. The purpose of sentencing is expounded in page 15, paragraph 4.1 of the Sentencing Policy Guidelines as follows: -
 

Sentences are imposed to meet the following objectives:

  1. Retribution: To punish the offender for his/her criminal conduct in a just manner.



2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
  3. Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.
  4. 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 demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.
  5. Community protection: To protect the community by incapacitating the offender.
  6. Denunciation: To communicate the community's condemnation of the criminal conduct.
5. In sentencing, the Court considers various mitigating factors. Some include: -
- (a) age of the offender;
  - (b) being a first offender;
  - (c) whether the offender pleaded guilty;
  - (d) character and record of the offender;
  - (e) commission of the offence in response to gender-based violence;
  - (f) remorsefulness of the offender;
  - (g) the possibility of reform and social re-adaptation of the offender;
  - (h) any other factor that the Court considers relevant.
6. In this case, the Appellant is aged 34 years old. His detailed background has been captured in the Probation Report. His attitude to the offence as well as the views of the local community administrators are on record.
7. The Appellant has a history of previous convictions in Kitale Chief Magistrates Court Criminal Case no 3833 of 2019 where he was convicted to one-year imprisonment on the offence of stock theft. He was also convicted in Kitale Chief Magistrates Court Criminal Case no E110 of 2021 on charges of stock theft and handling stolen property. He was sentenced to 3 years imprisonment. He was later released on a Community Service Order, but instead he absconded.
8. By considering the totality of the above coupled with the need to strike a balance between the victim's family and the fact that the Appellant is a repeat offender, this Court finds that the Appellant ought to undergo a reformation program in prison. This is, therefore, not a case deserving of a non-custodial sentence.
9. Consequently, the following sentence is hereby rendered: -
- a. The sentence of 10 years' imprisonment is hereby reviewed to 7 years' imprisonment.
  - b. The sentence shall run as from 19<sup>th</sup> July, 2021 when he was charged before the trial Court.
  - c. File marked as Closed.
10. Orders accordingly.



**DELIVERED, DATED AND SIGNED AT KITALE THIS 7<sup>TH</sup> DAY OF MARCH, 2024.**

**A. C. MRIMA**

**JUDGE**

Sentence delivered in open Court in the presence of:

Gilbert Kipsang, the Appellant in person

Miss. Kiptoo, Learned Prosecutor instructed by the Director of Public Prosecutions for the State.

Chemosop/Duke – Court Assistants.

