



**Shaffi v Republic (Criminal Miscellaneous Application  
E044 of 2023) [2024] KEHC 2402 (KLR) (6 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2402 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL MISCELLANEOUS APPLICATION E044 OF 2023**

**RB NGETICH, J**

**MARCH 6, 2024**

**BETWEEN**

**ABDUL SHAFFI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant was charged with the offence of burglary contrary to section 304(2) and stealing contrary to section 279(b) of the *Penal Code*. The particulars of the charge were that the accused between the night of 22<sup>nd</sup> and 23<sup>rd</sup> September, 2022 at unknown time at Marigat Township Marigat Location in Baringo South Sub- County within Baringo County, jointly with others already before court broke and entered into a dwelling house of Mr. David Too with intent to steal therein and did steal two cartons of Compo (10) valued at Kshs.5,000/= the property of the said David Too.
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 accused on the 26<sup>th</sup> day of September,2022 at around 0900hours at Marigat Township Marigat Location in Baringo South Sub- County within Baringo County, otherwise than in the course of stealing dishonestly detained one (1) packet of army biscuits valued at Kshs.100/= the property of Mr. David Too knowing or having reason to believe to be stolen goods.
3. The accused pleaded guilty to the charges and he was convicted on his own plea of guilty. The court then proceeded to sentence the accused to serve 4 years imprisonment on the 16<sup>th</sup> November,2021.
4. The applicant has now approached this court through an application filed on the 29<sup>th</sup> November,2023 seeking that his appeal be allowed, sentence be reduced and he be granted a non-custodial sentence. The applicant states that he is a first offender, and is remorseful of what happened. He states that the



- sentence meted on him was too harsh and he is seeking a non-custodial sentence on ground that he has young children who depend on him and given a second chance, he will be a good law-abiding citizen.
5. A social inquiry report reveal that the applicant had formal education up to class 5 at Alice Ingham School in Marigat when he dropped out of school after the passing of his mother. He started engaging in casual labor within Marigat Township so as to earn a living. He is single and does not have any children.
  6. From the report, the applicant has a criminal past, having been committed to Shikusa borstal Institute vide CR 12/2015. He was released under licence but he breached the licence conditions. He later committed another offence of stealing and was charged vide Cr. 266/2020. He was placed on community service for a period of 6 months at the office of the assistant chief, Perkerra sub-location (Serial number KABICSO/M/2296). He did not perform the work as required and he was therefore imprisoned for a period of 1 year. He later benefited from the prison decongestion exercise in the year 2021 where he was released. He was arrested for the present charge of burglary in the year 2022. He previously used the name James Emuria, but changed his name to name Abdul Shaffi in this matter claiming that he changed religion to Islam.
  7. The assistant chief indicated that the inmate has been quite troublesome within the community and he has a criminal history that spans close to 10 years now. She cited the instances where the applicant benefited from a non-custodial sentence but he breached the order. She confirmed that the applicant benefited from the decongestion exercise but he still went on to commit subsequent offence. She is opposed to the applicant being released to serve non-custodial sentence.
  8. The applicant stated that he has learnt a lesson and has changed his ways. While in prison, the applicant has undertaken a course in upholstery but he is yet to sit for the grade test.
  9. The victim who is a police officer said applicant is a well-known thief. He restated sentiments of local administration and stated that the applicant should complete his sentence in prison. The Probation officer states that the applicant is due for release on the 16<sup>th</sup> of July 2025 and restated sentiments by local administration.
  10. Prison administration confirmed that the applicant is learning upholstery in prison though he is yet to sit for the test and are of the view that he should complete the course as it will equip him with a skill he can rely on.

### **Determination**

11. I have considered the nature of the offence, sentiments by local administration, victim and the applicant. I also take note of the fact that the applicant has criminal history starting from the time when he was a minor; he has had opportunity to mend his ways but he has kept reoffending after release or completing non-custodial sentence. In view of the fact that the applicant is a repeat offender and has been given opportunity to change while in the community but he has not shown any intention to change, and the fact that he has not completed training offered in prison which may help him earn a living so as to desist from engaging in petty thefts, I am of the view that it is appropriate for the applicant to complete sentence while in prison. I therefore decline to review applicant's sentence.
12. Final Orders
  1. I decline to review applicant's sentence.
  2. Applicant to complete sentence in prison.



**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 6TH DAY OF MARCH 2024.**

.....

**RACHEL NGETICH**

**JUDGE**

**In the presence of:**

Applicant present.

Ms Ratemo for State.

Elvis – Court Assistant.

