



REPUBLIC OF KENYA



**KENYA LAW**  
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**Bondich v Republic (Criminal Revision E008 of 2024)  
[2024] KEHC 3498 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3498 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL REVISION E008 OF 2024  
RB NGETICH, J  
APRIL 11, 2024**

**BETWEEN**

**REUBEN ROTICH BONDICH ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant was charged with the offence of Stealing by servant contrary to section 281 of the [Penal Code](#). The particulars of the charge were that between the month of March, 2022 and the month of March, 2023 at unknown time at Kimalel Location Baringo south Sub- County within Baringo County, being a servant to Noah Kiprop Chepwarwa, the accused stole 21 goats valued at Kshs. 80,000/= the property of Noah Kiprop Chepwarwa which came into his possession by virtue of his employment.
2. The accused pleaded guilty to the charges and the court proceeded to convict him on his plea of guilty. The facts were read to the accused who admitted to be true and on the 24<sup>th</sup> April, 2023 sentenced the accused to serve three years imprisonment.
3. Dissatisfied with the sentence of the trial court, the convict has approached this court seeking review of sentence. He prays for a non-custodial sentence on grounds that he is remorseful, he pleaded guilty to the charges and he is a sole breadwinner to his family.
4. The court directed that a social inquiry report be availed to assist the court in deciding whether to revise the sentence and the appropriate sentence. The social enquiry report was filed on the 12<sup>th</sup> March, 2024. It shows that the applicant earned a living through farming and has six other siblings.
5. The accused's brother attributed the applicant's criminality to excessive alcohol consumption. He further stated that he has had constant communication with the victim and the victim has agreed to be compensated with Kshs. 80,000/= and he has managed to repay him Kshs. 20,000/= and has promised



- to repay the remaining balance later. He noted that in the agreement, they did not come up with a time frame on how the balance of Kshs 60,000/= will be repaid. He prayed for applicant's sentence to be revised to non-custodial sentence so that he may pay school fees for his son who is currently in high school.
6. The inmate had formal education up to standard 7 at Keturwo primary school where he dropped out in the year 2002 due to his own personal will and home challenges. He married in the year 2006 and were blessed with one child but his wife has since remarried. His child is currently at his parent's home. The applicant only talks to third last born brother. He was used to alcohol before his arrest and at the moment while in custody, he is of good health.
  7. The applicant accepts the offence as charged. He indicates that he had been selling the goats in bits when asked by his girlfriend to do so. He alleged to have been giving her the said money so that she would follow up on a land that they were to buy in Mochongoi but the said girlfriend later ditched him. On being asked by his employer about the whereabouts of the missing goats at the different instances, the applicant kept lying that they were grazing in the forest. The employer tricked him to bring all the goats for ear tagging and that is when he noticed that he had been caught. He went into hiding for days but was later found and apprehended. Further inquiry revealed that the offender is considered as habitual drunkard, violent and goes physical with the community members. He is also alleged to have been stealing goats from the community.
  8. The applicant indicates that he committed the offence because his employer had not paid him for a long period of time. He prays for a non-custodial sentence so that he can assist his parents and his child and promises to repay his former employer and hopes that his former employer re employ him. From the report, the applicant's brother has managed to compensate the complainant Kshs.20,000/= and promises to repay the remaining kshs 60,000/= later.
  9. The local administration from where the applicant reside indicated that he has not been involved in any criminal offence apart from his excessive alcohol consumption and are not opposed him being given community rehabilitation; whereas local administration where the applicant used to work opposed the applicant being released on non-custodial sentence on ground that he had a habit of stealing people's goats within the community and if released, he will continue with the habit thus prefer him continue serving his custodial sentence.
  10. From the social inquiry report, the applicant was remaining with 13 months to finish his sentence at the time of filing the report. From the probation officer's assessment, the applicant is suitable for community rehabilitation and recommend community service sentence at the Assistant chief's office Keturwo but left it to the discretion of the court.

### **Determination**

11. 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. The law mandates this court to make appropriate orders to correct the impugned order, decision or sentence and align it with the law if satisfied with grounds advanced for revision of sentence. The above is the import of Section 362 as read with Section 364 of the *Criminal Procedure Code*.
12. From the social inquiry report, the applicant was sentenced to 3 years imprisonment for offence of stealing goats valued at Kshs 80,000/=he was herding for his employer. Of the sentence imposed, he was remaining with 13 months to complete sentence at the time of preparing social inquiry report. The



applicant's brother has compensated the complainant with Kshs.20,000/= towards the compensation and promises to pay the balance of Kshs.80,000/=at a later date This was confirmed by the victim and he is opposed the Applicant being granted a non-custodial sentence.

13. From the social inquiry report, there is no doubt that the applicant has had time to reflect on his action and reform. The act of partly compensating the victim is also positive gesture from the family of the applicant. The intention of sentence among other things is to rehabilitate and restore and, in my view, justice will be served by allowing the applicant to serve the remaining period of sentence within the community; this will also serve to deter the would-be offenders who will see the applicant perform work within the community to compensate for his wrong. From the foregoing, I am inclined to revise the applicant's sentence.

14. Final Orders: -

1. The applicant is sentenced to community service for the remaining period of sentence.
2. The applicant to serve at the Assistant chief's office Keturwo.

**RULING DELIVERED, DATED AND SIGNED IN VIRTUALLY AT KABARNET THIS 11<sup>TH</sup> DAY OF APRIL 2024.**

.....

**RACHEL NGETICH**

**JUDGE**

**In the presence of:**

CA Sitienei.

Ms. Ratemo for state.

Applicant present.

