



**Kipkemboi v Republic (Criminal Revision E088 of 2024)
[2024] KEHC 4329 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4329 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E088 OF 2024
RN NYAKUNDI, J
APRIL 11, 2024**

BETWEEN

PHILEMON KIPKEMBOI APPLICANT

AND

REPUBLIC RESPONDENT

*(Being an application for revision of sentence in criminal case no.
E2522 of 2023 before Hon. O. Mogire (SPM) dated 21st December 2023)*

RULING

1. The applicant was charged, tried, convicted and sentenced to 2 years imprisonment for the offence of breaking and committing a felony contrary to section 306(a) of the *Penal Code*.
2. The applicant has approached this court pursuant to sections 357,362,364& 382 of the Criminal Procedure Code as construed with Article 50(2)(p) & (q) as conjunctively read with Article 50(6)(a) & (b) of *the Constitution*. In addition, the Court is privy to the Probation Officer's report dated 21st March 2023 which is non-responsive as against the applicant to have his sentence reviewed. One of the key highlights flows from the recommendation from the report contextualized in the following language 'despite the offender's plea for forgiveness and leniency, this officer received numerous complaints from the area chief and the community concerning the offender. They are opposed to a non-custodial sentence.'
3. I echo the words set out in the comparative jurisprudence in *S v Immelman 1978 SA726(A)*, where the Court stated that:
 - a. The general rule is that this Court must decide the question of sentence according to the facts in existence at the time when the sentence was imposed and not according to new circumstances which came into existence afterwards and, even if there are exceptions to this rule, this case does not appear to constitute such exception.



- 4. It is also trite that a sentence of a convict may also be reduced in circumstances where the review Court is of the view that the penalty so imposed by the trial Court and complained against is grossly disproportionate to the offence itself. The empirical evidence in this matter shows that the offender/applicant is a repeat offender. The area chief cites that he has known the offender for a long time and reports to having received numerous complaints concerning the offender/applicant's behavior. He further cites that the offender broke out of the police cells in Kipsombe station and tried to flee but was rearrested. The fear therefore is whether an early release of the convict/applicant is likely to scale down the deterrent aspect of the Criminal Justice System as the offenders' accomplices are still at large.
- 5. In so far as the community-based rehabilitation of the offender is concerned and in absence of cogent evidence that release of the applicant would be for the common good of society, I decline to exercise discretion to review the sentence as pleaded in the Notice of Motion. In terms of section 382 of the Criminal Procedure Code, the application lacks merit and is therefore dismissed forthwith.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 11TH DAY OF APRIL 2024.

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R. NYAKUNDI
JUDGE

<i>CRIMINAL REVISION NO. E088 OF 2024</i>	0
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