



**Kipngetich v Republic (Criminal Revision E283 of 2022)
[2024] KEHC 4321 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4321 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E283 OF 2022
RN NYAKUNDI, J
APRIL 11, 2024**

BETWEEN

ABEDNEGO KIPNGETICH APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Representation:

Mark Mugun for the state

1. The applicant was charged with the offence of burglary contrary to section 304(2) of the *Penal Code*. The particulars of the offence are that on the 21st day of October, 2022 at around 0030 hours at Joy market in Soy Sub-County, within Uasin Gishu County, the applicant broke and entered the dwelling house of Enock Karani, with the intent to steal therein and did steal from therein one shaving machine, the property of the said Enock karani valued at Kshs. 4,500/=.
2. The applicant pleaded guilty to the offence before Hon. O. Mogire on 17th November, 2022 and as a consequence, he was convicted on his own plea of guilty and sentenced to serve 2 years imprisonment.
3. 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*.
4. The applicant seeks a sentence review based on the probation report filed on 26th April, 2023. According to the report, the prison authorities has nothing to say about him. His brother Mr. Walter Kimutai is willing to take him back and be part of the reintegration process.
5. Further, the applicant is remorseful and pleaded for forgiveness. He pleaded that he may be allowed to perform unpaid public work at Soy Primary school.



6. In determining whether to impose a custodial or non-custodial sentence, the court is required to take into account the following factors: -
 - a) Gravity of the offence: - sentence of imprisonment should be avoided for misdemeanour.
 - b) Criminal history of the offender. Taking into account the seriousness of the offences, first offenders should be considered for non-custodial sentence.
 - c) Character of the offender: - non-custodial sentence are best suited for offenders who are already remorseful and receptive to rehabilitative measures.
 - d) Protection of the community: - where the offender is likely to pose a threat to the community.
 - e) Offender's responsibility to third parties: - where there are people depending on the offender.
7. I have considered the offence in question and the aggravating factors. The sentencing objectives in Kenya have been captured in the [Sentencing guidelines](#) 2023 to be the following: -
 - i. Retribution: to punish the offender for his/her criminal conduct in a just manner.
 - ii. Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
 - iii. Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law-abiding person.
 - iv. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.
 - v. Community protection: to protect the community by incapacitating the offender.
 - vi. Denunciation: to communicate the community's condemnation of the criminal conduct.
 - vii. Reconciliation: To mend the relationship between the offender, the victim and the community.
 - viii. Reintegration: To facilitate the re-entry of the offender into the society.
8. I have considered the probation report and the aforementioned factors and the conclusion I draw is that the applicant is eligible to serve a non-custodial sentence. The factors that precipitate such a sentence are that he is a first offender, he pleaded guilty, the items in question were recovered and he has expressed willingness to perform unpaid public work.
9. This court is clothed with wide powers under article 165 (6) and (7) of the [Constitution](#) and section 362 as read with section 364 of the [CPC](#) to look at the legality of the order on sentence by the trial court. Just a glance of it shows clear mitigation factors which reduces the seriousness of the offence or the culpability of the applicant. Again, with no special order of priority they include the following:
 - a. Youth of the applicant
 - b. Immaturity of the applicant
 - c. The previous good character of the applicant
 - d. Restitution of part of the stolen property to the complainant
 - e. A plea of guilty entered by the applicant



- f. Cooperation with the police by the applicant after the commission of the offence
 - g. Expression of remorse by the applicant before the trial court
10. In the upshot and in considering the objectives of sentencing in totality, I am inclined to place the applicant to perform unpaid public work at Soy primary school for a period of 11 months being the balance of his sentence.

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

R. NYAKUNDI

JUDGE

