



REPUBLIC OF KENYA



**Kiprono v Republic (Criminal Revision E058 of 2023)
[2024] KEHC 3187 (KLR) (4 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3187 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL REVISION E058 OF 2023**

RB NGETICH, J

APRIL 4, 2024

BETWEEN

HUSSEIN KIPRONO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged alongside another 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 being that the accused persons on the night of 11th and 12th day of August, 2022 at unknown time at Marigat Inn village, Marigat Location in Baringo South Sub- County within Baringo County broke and entered a shop of Lawrence Biwot Talaam with intent to steal and therein stole one (1) Sack of Sugar valued at Kshs.6,700/= eight cartons of bar soap valued at Kshs,13,600/=, two cartons of yeast valued at Kshs.8,600/= cash amounting to Kshs. 15,000/=, four cartons of milk valued at Kshs.2,600/= Samsung Television 40 inches valued at Kshs.40,000/=, Safaricom credit cards valued at Kshs. 7,000/= and other assorted items valued at Kshs.15,000/= all valued at Kshs.118,800/= the property of the said Lawrence Biwot Talaam.
2. The Applicant faced an alternative charge of handling stolen goods contrary to section 322(1)(2) of the *Penal Code*. The particulars of the charge being that the applicant on the 12th day of August, 2022 at 0800Hrs at Kampi wakulima village Marigat Location in Baringo South Sub- County within Baringo County, otherwise than in the course of stealing, dishonestly retained one packet of cigarettes valued at Kshs.300, Two hundred Shillings coins and Four bars of soap valued at Kshs.800 all valued at Kshs1,300/= the property of Lawrence Biwot Talaam knowing or having reasons to believe it to be stolen.
3. The Applicant denied the charges which culminated in the matter being set down for full trial and in proving the charges against the Applicant, the prosecution availed 4 witnesses; and after hearing the



prosecution and the defence evidence, the Learned Magistrate found the accused persons not guilty in Count I and acquitted them of the charge. In respect to alternative charge, the trial court found the applicant guilty, convicted and sentenced him to serve 5 years imprisonment and the court directed that the time spent in custody being from 18th August, 2022 be computed in the sentence.

4. The applicant has now approached this court seeking a non-custodial sentence on ground that he is remorseful and the complainant who was also his neighbor is interested in withdrawing the case. He states that he was convicted to serve 5 years imprisonment which is too harsh for him considering he was a first offender and he promises not to repeat the mistake again. He avers that he has a young family who depend on him for their living.
5. When the matter came up for hearing on the 6th day of February, 2024, the applicant prayed that the sentence be reduced and he be allowed to serve the remaining sentence out of prison. In response, the state counsel Mr. Mongare submitted that he is aware that the Applicant is seeking review of the sentence and left it to the discretion of the court.
6. The court directed that a social inquiry report be filed. A social inquiry report has been filed. From the report, the applicant sat for his KCSE in the year 2019 and attained a mean grade of D+. He joined Rift Valley Institute of Science and Technology and studied Mechanics which he did up to grade 2 level and then he started plumbing grade 3 but he did not complete the course due to the disruptions caused by Covid 19 in the year 2020.
7. He is married with one child aged 2 years old. He worked in a garage in Marigat Township. He used to consume alcohol but later stopped. He said he is of sound health. He stated that his friend who is also his co-accused one Kelvin Kakuko went to the applicant's house with the stolen goods and as they were in the house, the police arrived. The said Kelvin run away leaving him in the house and the police recovered the items and it was then that he learnt that the items were stolen.
8. The area assistant chief described the applicant as being part of a gang that would terrorize the locals by engaging in theft and house breaking. He however said the applicant was new in the gang and was of good conduct before. The village elder confirmed what was said by the area chief and said the co-accused was a well-known thief and a jail bird. He said since the applicant was of good conduct before joining the gang, he may have reformed in prison and he is not therefore opposed to non-custodial sentence for the remainder of his sentence and said he can serve community service order at the Marigat police station.
9. The applicant's mother said the applicant's wife/girlfriend left their child and has remarried. she prayed for the applicant to be released so that he can take care of the child.
10. The victim indicated that he knew the inmate and the co-accused. She said the applicant's co-accused is well known as a notorious thief within the locality but the applicant had good character prior to joining the gang. He was therefore of the opinion that the court can be lenient towards the applicant herein but not his co-accused.
11. The probation officer's view is that the applicant's criminality is attributed to him involving himself with negative peers. The officer's view is that 5-year period jail term is too harsh for theft of goods worth KShs. 1,300/=. As at 6th of March 2024, the applicant will have served 1 year 11 months and 5 days with his expected release date being 15th of December 2025. He concurs with the local administration that the applicant may be released to serve a non-custodial sentence. He recommends that he serves 1-year community service at Marigat police station. During this period, he will be closely monitored as well as receive guidance and counselling on how to handle negative peers. She however left it to the discretion of the court.



Determination

- 12. I have considered the application herein. The application 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 is 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.
- 13. The applicant argued that the sentence imposed was harsh in view of the fact that he was a first offender. I have considered the mitigation by the Applicant together with the oral submissions by the state. The Applicant prays for a non-custodial sentence. I have also considered the social inquiry report which gives positive information in respect to the accused. It comes out clearly that the accused’s behavior was compromised by his peers. I take note of the fact that the applicant had served one year 11 months 5 days at the time probation officer was preparing social inquiry report which is a period almost two years. There is no doubt that the applicant has had time to reflect on his action while in prison. He has shown remorse and the victim is not opposed to him being released to serve non-custodial sentence for the remaining period. In view of the above, I am inclined to revise the remaining sentence to one-year community service.

Final Orders

- 1. The applicant’s remaining sentence is revised to one-year community service.
- 2. The applicant to serve community serve at Marigat police station.

RULING DELIVERED, DATED AND SIGNED IN VIRTUALLY AT KABARNET

THIS 4TH DAY OF APRIL 2024.

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RACHEL NGETICH

JUDGE

In the presence of:

CA Sitienei.

Ms. Ratemo for state.

Applicant.

