



**Kurui v Republic (Criminal Revision E009 of 2024)
[2024] KEHC 4417 (KLR) (2 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 4417 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL REVISION E009 OF 2024**

RB NGETICH, J

MAY 2, 2024

BETWEEN

PETER KIPSANG KURUI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged with the offence of stealing stock contrary to section 278 of the [Penal Code](#). The particulars of the charge were that on the 18th day of August, 2022 at unknown time at Kapkelelwa area in Baringo Central Sub- County within Baringo County the accused stole one (1) she goat valued at Kshs.6,000/= the property of Nathan Korir.
2. In the alternative, the applicant was charged with the offence of handling stolen goods contrary to section 322(1)(2) of the [Penal Code](#). The particulars of the charge were that on the 18th day of August,2022 at unknown time at Kapkelelwa area in Baringo Central Sub- County within Baringo County, otherwise than in the course of stealing, the accused knowingly or having reason to believe it to be stolen goods, dishonestly received or retained a she goat.
3. The charge and its full particulars were read over and explained to the accused on 22nd August, 2022.He denied the charge and the matter was fixed for hearing on the 5th September, 2022.On 5th September 2022 the accused requested to have the charges read over to him again and upon the charges being read to him, he pleaded guilty to the main charge and was convicted on his own plea of guilty. On 27th September,2022 the accused was sentenced to serve 4 years imprisonment.
4. Dissatisfied with the sentence imposed by the the trial court, the applicant filed this application on the 7th February,2024 seeking review of sentence on ground that the sentence imposed was harsh and he has since reformed. He stated that he has served 16 months and is remaining with 15 months to complete the sentence. He said while in prison, he has learnt carpentry and has obtained Grade one certificate.



5. In response, Ms. Ratemo for the state prayed that a social inquiry be done and the Applicant to avail the certificates of training to the court. The court called directed the probation officer to do social Inquiry and file report.
6. Social inquiry report was filed on the 4th day of April, 2024. From the report, the applicant's father stated that the applicant is not a first offender; that he had stolen a sack of maize before and was almost killed by a mob. He said his son's criminality is due to desire for quick money. He added that he had purchased motor cycle for him but he abandoned the business. He is opposed to the applicant going to stay with him and he preferred him staying in Baringo County due to his own safety as he feels the community is hostile towards him over the offence he committed; secondly, the inmate has a house within Baringo County where he committed the offence. He said the applicant does not use alcohol.
7. From the report, the applicant is aged 29 years old and had formal education up to standard eight and dropped out due to financial constraints. Thereafter he engaged in casual jobs within the community. He is married with one child. He said no one has paid him a visit while in custody and says if released he still fears the victim who is his uncle as he has not reconciled with him for stealing from him money and a goat. Report indicate that members of public alerted the victim when the applicant was in the process of selling the goat; he was subjected to mob justice but was rescued by the police and charged with the offence herein.
8. He admits the offence and says he wanted money to support his wife. While in custody he has been attached to kitchen department, industry and general labor. He indicated that he is not willing to sit for any examination.
9. The victim is opposed to the applicant being released and is of the view that he should complete his sentence while in prison and if released, he should relocate to stay where his father is as he has committed several offences and has undergone several Alternative Dispute Resolution processes but has not changed.
10. The area chief stated that the applicant is most troublesome youth within the community and has disturbed his uncle for a very long time and had even gone to an extend of wanting to burn his uncle's house. He said before he completes sentence, his close family members should visit him and discuss where he will settle and be given some conditions failure which, his life may be in danger.
11. In view of the above, the probation officer's assessment of the applicant's level of acceptance at community level is very minimal as his father is not willing to stay with him and facilitate community rehabilitation. The victim has not reconciled with the applicant and he is opposed to him being release to complete sentence in the community. The probation officer's recommendation is that the applicant is not suitable for community-based rehabilitation but leave it to court's discretion.

Determination

12. This application invokes this court's revisional jurisdiction provided under Article 165(3) of the [constitution](#) which empowers this court 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 and if so satisfied to correct the impugned order, decision or sentence and align it with the law. The above is the import of Section 362 as read with Section 364 of the [Criminal Procedure Code](#).
13. In view of the above I have considered the nature of the offence, the sentence imposed by the trial court together with social inquiry report filed by the probation officer. Further to the above, I take note of



objectives of sentencing as outlined in the 2023 [Judiciary of Kenya Sentencing Policy Guidelines](#) at page 5, paragraph 1.3.1 as follows: -

“Retribution: To punish the offender for his/her criminal conduct in a just manner.

Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.

Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.

Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims’, communities’ and offenders’ needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender’s contribution towards meeting the victims’ needs.

Community protection: To protect the community by incapacitating the offender.

Denunciation: To communicate the community’s condemnation of the criminal conduct.

Reconciliation: to mend the relationship between the offender, the victim and the community

Reintegration: to facilitate the re-entry of the offender into the society.”

14. The above objectives have to be taken into consideration while imposing or revising sentence. The social inquiry is intended to obtain information that will assist the court in determining appropriate sentence geared towards achieving the objective of sentencing. In view of the above, I take note of the fact that from the report, the applicant was an habitual offender who had been given an opportunity for rehabilitation within the community by being subjected to ADR mechanisms but continued reoffending. The reoffending conduct almost cost him his life as he was subjected to mob justice. The community and his extended family are reluctant to accept him. Local administration is also opposed to the applicant being rehabilitated within the community. In view of the above, the appropriate option for the accused is custodial sentence with the hope that before he completes the sentence, reconciliation will be done to allow reintegration back to the community without any difficulty. From the foregoing, I decline to revise the applicant’s sentence.

Final Orders: -

The applicant’s application for review is hereby dismissed.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 2ND DAY OF MAY 2024.

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RACHEL NGETICH

JUDGE

In the presence of:

CA Elvis.

Ms. Ratemo for state.

Applicant Present in person.

