



REPUBLIC OF KENYA



**Kamau v Republic (Criminal Revision E006 of 2024)  
[2024] KEHC 6691 (KLR) (6 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6691 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CRIMINAL REVISION E006 OF 2024  
CW GITHUA, J  
JUNE 6, 2024**

**BETWEEN**

**ELIJAH MWANGI KAMAU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant, Elijah Mwangi Kamau presented a Notice of Motion dated 4<sup>th</sup> January 2024 seeking review of the sentence imposed on him in Kigumo Principal Magistrate's Court Criminal case no. E1003 of 2022.
2. The record of the trial court shows that the applicant was convicted of the offence of housebreaking contrary to section 304 (1) (b) and stealing contrary to section 279 (b) of the *Penal Code*. The particulars were that on 12<sup>th</sup> June 2012 at Igikiro village in Murang'a South Sub-County, jointly with others not before the court, the applicant broke and entered the building used as a dwelling dwelling by Charles Kinyanjo Nginya and stole cash Kshs 600,000 the property of the said Charles Kinyango Nginya.
3. The record further shows that the applicant pleaded guilty to the charge and was convicted on his own plea of guilty. He was sentenced to five (5) years imprisonment.
4. In his current application, the applicant beseeches this court to revise his sentence on grounds that when passing sentence, the learned trial magistrate failed to consider the time he had already spent in lawful custody. He urged the court to reduce the sentence to the period already served claiming that he was fully rehabilitated and was ready to be integrated back into the community.
5. At the hearing, in his oral submissions, the applicant re-iterated the above claims and emphasized that he was a first offender as the charge of robbery with violence which had previously been preferred against him had been withdrawn.



6. Learned prosecution counsel, Ms Muriu, in her submissions conceded that the learned trial magistrate had erred by failing to take into account the period the applicant had spent in lawful custody when passing sentence. She urged the court to revise the applicants sentence to that extent only.
7. This application invokes the courts revisional jurisdiction which can only be exercised in the circumstances envisaged in Section 362 of the Criminal Procedure Code (CPC). Section 362 CPC empowers this court to call for and examine the record of the trial court to satisfy itself there was no illegality, mistake or impropriety in the orders or sentence passed by a trial court.

This therefore means that this court can only revise the sentence imposed against the applicant if it was satisfied that the sentence was either illegal in the sense that it was not in accordance with the law or it was tainted with impropriety. The court can also revise the sentence if it was of the view that when imposing it, the trial court erred by applying wrong legal principles or taking into account extraneous matters or failing to consider relevant factors or otherwise abused its discretion.

8. In this case, the trial court's record reveals that in imposing the sentence of five (5) years imprisonment against the applicant, the learned trial magistrate was influenced by her belief that the applicant was not a first offender as he had admitted to having been previously charged with the offence of robbery with violence.

This in my view was an error on the trial court's part because a prosecution for a criminal offence does not necessarily have to result into a conviction and no evidence was placed before the trial court to confirm that the applicant had been convicted of the offence charged. Besides, the record shows that the applicant had clearly indicated to the learned trial magistrate that the charge had subsequently been withdrawn under Section 87(a) of the Criminal Procedure Code.

9. Another error that was made by the learned trial magistrate was failure to impose separate sentences for each limb of the offence subject of applicant's conviction. Instead of imposing an omnibus sentence, the learned trial magistrate should have imposed a separate sentence for the offence of housebreaking and for the offence of stealing so that it was clear which sentence applied to which offence and whether the sentences were to be served consecutively or concurrently.
10. Lastly, as correctly noted by the learned prosecution counsel, the learned trial magistrate erred in law when meting out the impugned sentence since she failed to comply with the mandatory provisions of Section 332(2) of the Criminal Procedure Code which require courts to take into account the time an accused person had spent in lawful custody prior to the date sentence was pronounced.
11. For all the foregoing reasons, I find that this application meets the threshold of review of the applicants sentence and the same is accordingly allowed.

Having considered the nature of the offences the applicant committed and the amount of money stolen which was apparently not recovered in full and considering that the applicant ought to be treated as a first offender as there is no evidence of any previous convictions, I hereby set aside the sentence imposed by the trial court and sentence the applicant to serve three years imprisonment in each limb of the offence.

The sentences shall run concurrently and shall be computed from the date of the applicant's arrest which according to the record is 24<sup>th</sup> October, 2022.

It is so ordered.

**DATED, SIGNED and DELIVERED at MURANG'A this 6<sup>th</sup> day of June, 2024.**

**C.W GITHUA**



## **JUDGE**

In the presence of :

The Applicant

Ms. Mureu for the respondent

Susan Waiganjo Court Assistant

