



REPUBLIC OF KENYA



KENYA LAW
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**Ngetich v Republic (Revision Case 54 (E225) of 2022)
[2023] KEHC 17311 (KLR) (23 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 17311 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
REVISION CASE 54 (E225) OF 2022
HM NYAGA, J
MARCH 23, 2023**

BETWEEN

ALFRED KIPNG'ENO NGETICH APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Alfred Kipng'eno Ngetich was charged in Molo Chief Magistrate's Court with the offence of House Breaking contrary to Section 304(1)(b) and Stealing Contrary to Section 279(b) of the *Penal Code* and Handling Stolen Goods contrary to Section 322(1)(2) of the *Penal Code*.
2. From the lower court record it is apparent that the latter count was framed as a 2nd count, and not an alternative count. The record further shows that the amended charge was read to the accused but it is not clear if both counts as framed were read to the accused. He pleaded guilty to only one count, which presumably was the first count, which had 2 limbs. The 2nd count was supposed to be an alternative count since one cannot be found to have stolen and handled the same property at the same time. The lower court correctly, but without stating so, did not read the alternative count once the accused pleaded guilty to the first count.
 1. Upon his plea of guilty the accused was convicted and sentenced to serve 4 years' imprisonment on each limb of the 1st count. The sentences were to run concurrently.
 2. This file has been placed before me for revision of the sentence under the powers granted to this Court by Article 165 (6)(7) of the *Constitution*. It is also part of the larger exercise by the Judiciary to decongest the prisons, where applicable. To this end the Honourable the Chief Justice gave directions on the courts to make efforts to decongest the prisons which are overcrowded.
 3. The said articles of the *Constitution* provide as follows;



- (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
 - (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.
3. The total value of the stolen property being a phone make Techno Pop 2 F and Amplifier is Ksh 8800/=. The Applicant has so far served about 1 year 3 months in prison.
 4. The Sentence Review Report filed on March 22, 2023 indicates that the Applicant has reformed and has acquired Masonry and Plumbing skills while in the Prison. He regrets committing the offence and the Community Service officer, NO Nancy recommends community service.
 5. In my view, if a custodial sentence was necessary, then that purpose has been served.
 6. In light of the above report and with a view to decongest the prisons this court reviews the sentence and hereby orders the release of the Convict from prison forthwith. He shall be placed on community service at the Assistant Chief's Office (Masaita) for the remainder of his sentence. He shall be closely supervised by the Chief, Londiani location who shall ensure the convict religiously performs any assigned community service to his satisfaction and fortnight reports made to the Community Service Officer, Londiani who shall monitor the behaviour of the convict for the remainder of the term.

As required by the law the applicant is informed that in the event of breach, this CSO order shall be revoked and he shall be returned to prison to serve the remainder of his prison term as imposed.
 7. File Closed.

DATED, SIGNED & DELIVERED AT NAKURU THIS 23RD DAY OF MARCH, 2023.

H. M. NYAGA

JUDGE

In the presence of;

C/A Jeniffer

Ms Murunga for state

Applicant present

