



REPUBLIC OF KENYA



**Republic v Gitau (Criminal Revision E025 of 2022)
[2023] KEHC 19958 (KLR) (13 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 19958 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL REVISION E025 OF 2022**

TA ODERA, J

JULY 13, 2023

BETWEEN

REPUBLIC PROSECUTOR

AND

JAMES NGUGI GITAU ACCUSED

RULING

1. This matter is before me for revision of sentence under section 362 of the [Criminal Procedure Code](#) in the spirit of prison decongestion.
2. The convict James Ngugi Gitau was charged in Nakuru Chief Magistrate's court Criminal case no 4941 of 2020 with the offence of House breaking and stealing contrary to section 304(1)(b) as read with section 279 (b) of the [Penal Code](#).
3. The charge sheet indicates that the offence was committed on October 27, 2021.
4. He was arraigned before Hon. Orenge (PM) and he pleaded guilty and was convicted on November 5, 2021 and sentenced to serve 18months imprisonment.
5. A pre-sentence report was filed herein on February 17, 2022 and the same is favourable to him and recommends he be placed for community service at Lare Chiefs camp.
6. I have noted that he was also convicted for similar charges in Nakuru Criminal case numbers 4929 of 2021 and 4930 of 2021 where he was also sentenced to 18 months imprisonment in each file.
7. He is thus a repeat offender however section 3 of the [Community Service Orders Act](#) provides that '

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(1) Where any person is convicted of an offence punishable with—



- (a) Imprisonment for a term not exceeding three years, with or without the option of a fine; or
 - (b) Imprisonment for a term exceeding three years but for which the court determines a term of imprisonment for three years or less, with or without the option of a fine, to be appropriate, the court may, subject to this Act, make a community service order requiring the offender to perform community service.
8. The sentence of House breaking and stealing is 7 years imprisonment. The convict herein was sentenced to 18 months imprisonment on each charge in the respective files. These cases thus fall within the purview of Section 3 (1) (b) of the Community Service Act. Section 3 (6) of the same Act provides that'
- (6) Where a court makes an order under this section in respect of two or more offences committed by the same offender, the court may direct that the period of community service specified in any of those orders shall be concurrent with or in addition to that specified in any other order.'
9. I have considered the similar nature of the offences in the 3 files, the value of the subject matter and the pre-sentence reports in each file which are favourable. I find that the cases herein are fit for review of sentences to decongest the prison. I order that the convict to serve the remainder of the sentence on community service at Lare Chief's camp. The sentences in this file and Nakuru Criminal case numbers 4929 of 2021 and 4930 of 2021 to run concurrently.

T.A. ODERA - JUDGE

13.7.2023

DELIVERED VIRTUALLY VIA TEAMS PLATFORM IN THE PRESENCE OF;

Applicant,

Kihara for the State

Court Assistant: Cheruyot.

T.A. ODERA - JUDGE

13. 7.2023

