



REPUBLIC OF KENYA



**Agutu & another v Republic (Criminal Revision E030 of 2023)
[2023] KEHC 23877 (KLR) (6 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23877 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL REVISION E030 OF 2023
RE ABURILI, J
OCTOBER 6, 2023**

BETWEEN

KEVIN OTIENO AGUTU 1ST APPLICANT

JACOB OTIENO MBOYA 2ND APPLICANT

AND

REPUBLIC RESPONDENT

*(From the original conviction and sentence in Senior Principal
Magistrate Criminal Case No. 502 of 2022 at Maseno)*

RULING

1. Jacob Otieno Mboya was convicted and sentenced vide Maseno SPM Criminal Case No 502 of 2022 on his own plea of guilty for the offence of Breaking into a building and committing a felony. He was to serve three (3) years imprisonment from December 29, 2022 to December 29, 2024.
2. He has now served about ten (10) months.
3. The Probation Officer recommends non-custodial sentence as the convict is remorseful and is willing to abide by the conditions set out including keeping away from bad company. He is married with 2 children who are minors. He is aged 26 years. The community is ready to help him be reintegrated back into the community.
4. I have considered the Sentence Review Report filed on August 24, 2023. I revise the sentence imposed on the convict Jacob Otieno Mboya and order that the convict shall be released from prison to serve Community Service Order at Kudho Primary School until December 29, 2024 and to be closely supervised by the Headteacher and monitored and evaluated by the Probation Officer, Kisumu.



5. On the part of the co-convict Kevin Otieno Agutu who is 38 years old and has no fixed abode, I hereby decline to revise the sentence imposed and order that he shall complete his prison term as imposed as it will be impossible to supervise him on non-custodial sentence.
6. I so order
7. File closed.
8. Vide Misc HCCR Application No 34 of 2020, they applied for consideration of the period they had spent in custody prior to their sentencing and the court allowed that application on March 3, 2021.
9. They have been in prison for close to eight (8) years now. They apply for sentence revision.
10. I have considered their application filed on August 14, 2023. I am not satisfied that the applicants qualify for sentence review for prison decongestion as they still have over 20 years to complete the prison term.
11. The case does not fall within Section 3 of the *Community Service Order Act*. I decline to revise the sentence considering the seriousness of the offence charged and convicted of wherein they were initially sentenced to death but on appeal to the Court of Appeal, vide judgment rendered on October 3, 2019, the death sentence was set aside and substituted with thirty (30) years imprisonment.
12. I decline to revise the thirty (30) years imprisonment and dismiss the application filed on August 14, 2023.
13. File closed.
14. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 6TH DAY OF OCTOBER, 2023

R. E. ABURILI

JUDGE

