



REPUBLIC OF KENYA



**Kakuko alias Katash v Republic (Criminal Revision E059 of 2024)
[2024] KEHC 14422 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14422 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL REVISION E059 OF 2024
RB NGETICH, J
NOVEMBER 14, 2024**

BETWEEN

KEVIN KAKUKO ALIAS KATASH APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Kevin Kakuko alias Katash was charged alongside another in Count I with the offence of Burglary Contrary to section 304(2) and stealing contrary to Section 279(b) of the [Penal Code](#). The particulars of the charge being that the accused persons on the night of 11th and 12th day of August, 2022 at unknown time at Marigat Inn village, Marigat Location in Baringo South Sub-county within Baringo County broke and entered a shop of Lawrence Biwot Talaam with intent to steal and therein stole one (1) Sack of Sugar valued at Kshs.6,700/= eight cartons of bar soap valued at Kshs,13,600/=, two cartons of yeast valued at Kshs.8,600/= cash amounting to Kshs. 15,000/=, four cartons of milk valued at Kshs.2,600/= Samsung Television 40 inches valued at Kshs.40,000/=, Safaricom credit cards valued at Kshs. 7,000/= and other assorted items valued at Kshs.15,000/= all valued at Kshs.118,800/= the property of the said Lawrence Biwot Talaam.
2. The Applicant faced an alternative charge of handling stolen goods contrary to section 322(1)(2) of the [Penal Code](#). The particulars of the charge being that the applicant on the 12th day of August, 2022 at 0800Hrs at Kampi wakulima village Marigat Location in Baringo South Sub-county within Baringo County, otherwise than in the course of stealing, dishonestly retained one packet of cigarettes valued at Kshs.300, Two hundred Shillings coins and Four bars of soap valued at Kshs.800 all valued at Kshs1,300/= the property of Lawrence Biwot Talaam knowing or having reasons to believe it to be stolen.
3. The Applicant denied the charges and after hearing of prosecution witnesses, the accused persons were acquitted of the main count under section 210 of the [CPC](#). Upon hearing of defence case, the applicant



was found guilty, convicted and sentenced to serve 5 years imprisonment. The court ordered for time spent in custody that is from 18th August, 2022 be computed in the sentence.

4. The applicant has now approached this court seeking review of his sentence to the time he has already served on ground that he has learnt his lesson the hard way and prayed for another chance in life; further that he is the sole bread winner and his family is in poverty owing to his imprisonment; that he has taken a step to mend his issues with the complainant and he has reformed, is repentant and has rehabilitated; he prayed to be re-integrated back to the society. The court called for social inquiry report.

Social Inquiry Report

5. From the report, the Applicant dropped out of school in class 7 on his personal will. In the year 2013, he started working as a boda boda rider in the community and doing casual jobs within the community. From the year 2018 to the time of his arrest, the inmate was engaged in mason jobs within the community. He is married with two children. The children are with her mother who is a single mother. He has 5 other siblings. They depend on casual jobs within the community as their main source of income.
6. The Applicant's mother and aunt prayed for community-based rehabilitation so that he can assist the family although they did not show willingness to facilitate his community rehabilitation but just wanted him to go back home. Further the Applicant has very little family interactions and has no one to guide him on how he can empower himself economically so as to avoid anti-social behavior in the name of getting quick money. He is of good health and abused alcohol and other substances.
7. The Applicant stated that his co-accused Hussein Kiprono went to his house with the said items and members of the community police found it at his house and he learnt that they were stolen items when police arrested him. He prayed for non-custodial sentence so that he can restart his life afresh and take care of his children. He said he has not reconciled with the victim as he alleges he does not know the victim.
8. The victim works as a businessman within Marigat Township and he is a family man. He is opposed to the applicant being granted non-custodial sentence as he is a known troublesome youth within the community and says the Applicant has not sought apology from the Applicant nor his family members.
9. The local administrator indicated that the Applicant is a troublesome youth within the community and being in custody has brought peace to the community. She is opposed to non-custodial sentence on ground that the Applicant's supervision will be with lots of difficulty since he lacks strong family support and community will.
10. The community policy member stated that the inmate is not fit to serve community rehabilitation sentence for being troublesome youth and his criminality is due to his desire for quick money. He is of the view that he should complete his sentence so that he learns a skill thus economically empowered.

Response by State

11. The prosecution counsel Ms. Ratemo submitted that they will be relying on the social inquiry report.

Determination

12. The application invokes the revisional jurisdiction of this court which gives the court powers, 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. If the court was so satisfied, the law mandated it to



make appropriate orders 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. The objectives of sentencing are outlined in the 2023 Judiciary of Kenya Sentencing Policy Guidelines at page 15, paragraph 4.1 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.”

14. I have considered sentiments by victim, local administration, the community and the applicant's family. I also take note of the fact that the applicant is remorseful and has reformed. The local administration opposed Applicant's release on ground that the Applicant is not suitable for community-based rehabilitation as it may prove difficult to rehabilitate him; they prefer him completing his sentence so that he can acquire a skill which will assist him earn a living and prevent his engagement in criminal activities for quick money. In view of the above I decline to review applicant's sentence.

15. Final order: -

Application for review of sentence is hereby dismissed.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 14TH DAY OF NOVEMBER 2024.

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RACHEL NGETICH

JUDGE

In the presence of:

* Elvis, Court Assistant.

* Ms. Ratemo for State.

* Applicant Present.

