



**Kemboi alias Kimwalel Tuitoek v Republic (Criminal Revision
E058 of 2024) [2024] KEHC 14491 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14491 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL REVISION E058 OF 2024
RB NGETICH, J
NOVEMBER 14, 2024**

BETWEEN

KIBET KEMBOI ALIAS KIMWALEL TUITOEK APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged with the offence of House Breaking and stealing contrary to section 304(1) as read with section 279(b) of the *Penal Code*. The particulars of the charge were that the accused on the 14th day of February, 2022 at unknown time at Kaprogonya area in Baringo Central Sub-County within Baringo County broke and entered the building used as a dwelling house by Paul Chelimo Malit and stole one TV valued at Kshs 56320/=, one woofer valued at Kshs 7,000/=, one decoder valued at Kshs 3,500/= and one torch valued at Kshs 300/= all valued at Kshs 67,120/= the property of Paul Chelimo Malit. The applicant was convicted of the offence and sentenced to serve six years imprisonment.
2. The applicant has now approached this court seeking review of his sentence to be allowed to serve the remaining sentence out of prison on ground that he is the sole bread winner in his family and his family is suffering adversely now that he is in jail. He pledges to be a law-abiding citizen should the prayer be granted.
3. In response, the prosecution counsel Ms. Ratemo submitted that the court had dealt with the applicant's application for revision before. In a rejoinder, the applicant stated that the court had directed that he could re-apply for review later and stated that he is remaining with one year to serve. The court directed that a social inquiry report to be filed.

Social Inquiry

4. From social inquiry report, the applicant is 30 years old. He did his KCPE in the year 2014; he managed to score 268/500. He did not continue with his education due to fee problem, personal will and at



that year his parents had separated at that time. The Applicant is married with two children. He is skilled in mechanics and for a while he has been doing general cleanliness. the Applicant's parents are separated and at the time of preparing the report, the mother was at her parent's home. She stated that the applicant is under his father's custody and prayed for his released so that he can restart his life. She however did not want to be involved in re-integration and resettlement of the inmate.

5. The Applicant's father stated that the applicant has been troublesome for a while within the community and attributed his criminality to the desire for quick money, negative peer pressure and excessive use of alcohol and other substances. He however said he visited the applicant while in custody and after a lengthy discussion with him, they were able to reconcile and the Applicant promised not to engage in any other criminal activity and if released, he will settle him at his grandfather's homestead and for a living he will do casual jobs within the community.
6. The circumstances of the offence are that the Applicant broke into the rental house of the complaint while the complaint was not in the house and stole items listed in the charge sheet. His behavior is attributed to effect of parental separation and peer pressure and desire to get quick money. He promises to abide by the conditions of non- custodial sentence and for a living he promises to engage in casual jobs within the community.
7. Efforts to reach out to the victim were futile; social inquiry reveals that the victim relocated from the estate he was living and his whereabouts is not known. The local administrator attributes the applicant's character to poor parenting, peer pressure and desire for quick money. He confirmed that the applicant and his father have reconciled. He is not opposed to non-custodial sentence and he is willing to facilitate his reconciliation within the community.

Determination

8. The application herein 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.
9. 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.”



10. From the report, the applicant has reconciled with his father and his father is willing to assist in his reintegration back to the community. This was confirmed by local administration who are also not opposed to community-based rehabilitation.

11. Final Order: -

Accused to serve probation sentence for the remaining period of sentence imposed by the trial court.

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.

