



**Wanjiru v Republic (Criminal Revision E482 of 2023)  
[2024] KEHC 15918 (KLR) (13 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15918 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CRIMINAL REVISION E482 OF 2023  
DO CHEPKWONY, J  
DECEMBER 13, 2024**

**BETWEEN**

**ANTHONY GACHOMBA WANJIRU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Before this court for determination is the Notice of Motion application dated 29<sup>th</sup> November, 2023 which is a reiteration of the grounds set out in the Affidavit of the Applicant sworn on the instant date.
2. According to the Applicant, he was charged, convicted his own plea of guilty and sentenced to serve twenty-four (24) months imprisonment for the offence of Breaking into a Building and committing a felony contrary to Section 306 (A) of the Penal Code in Kikuyu Magistrate Criminal Case No. E1000 OF 2022.
3. The Applicant holds that he is a first offender and deserves leniency as he is remorseful for the offence. He states that he is 34 years old with a young family and comes from a humble background. He contends that he has been in custody for almost ten (10) months, in which period he has since learnt his lesson and urges the court to grant him a non- custodial sentence for the remaining part of the sentence or grant him an option of a fine.
4. Despite being granted leave to file formal response to the application on numerous occasions, the prosecution opposed the application orally. Through Ms Ndeda counsel for the prosecution on 5<sup>th</sup> November, 2025 the trial court granted a legal sentence for the offence the Applicant was charged with. She stated that the prescribed sentence for the offence is five years and therefore the sentence of 24 months imprisonment without an option of fine was lenient as the offence resulted into a loss of Kshs. 51,250/=. She even went on to urge the court to enhance the sentence of the Applicant.



## Analysis and Determination

5. Having listened to the prosecution counsel in their response to the application dated 29<sup>th</sup> November, 2023, I have also read through the grounds upon which the Applicant has advanced in support of his prayer and find that basically what the Applicant is seeking is a review of the sentence that was meted against him in Kikuyu Magistrate's Criminal Case No.E1000 of 2022.
6. The power to determine an application of this nature is made in exercise of the supervisory jurisdiction of the High Court in criminal cases which is provided for under Article 165(6) and (7) of *the Constitution* of Kenya, 2010 and Sections 362 to 366 of the Criminal Procedure Code.
7. Article 165(6) and (7) provides that:-
  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.
8. Section 362 of the Criminal Procedure Code states:-

[362]. The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court"
9. I have read through the original record and proceedings in Kikuyu Magistrate's Criminal Case No.E1000 of 2022 and established that in this case, the Applicant was charged with the offence of Breaking into a Building and Committing a Felony under Section 306(a) and 306(b) of the Penal Code which provides as follows:-

"A person who -

  - a. Breaks and enters a school house, shop, warehouse, store, office, counting house, garage, pavillion, club, factory or workshop or any building belonging to a public body, or any building or part of a building licensed for the sale of intoxicating liquor or a building which is adjacent to a dwelling house and occupied with it but is not part of it, or any building used as a place of worship, and commits a felony therein; or
  - b. Breaks out of the same having committed any felony therein; is guilty of a felony and is liable to imprisonment for seven years".
10. The Applicant/Accused was arraigned in court on 13<sup>th</sup> December, 2022 whereby he pleaded 'Not Guilty' to the said offence. However, on 9<sup>th</sup> October, 2023, the Applicant changed and pleaded 'Guilty' to the said offence and upon confirming the facts as laid to him by the prosecution, he was convicted on his own 'Plea of Guilty'. He was then sentenced to serve twenty-four (24) months imprisonment for the offence of Breaking into a Building and Committing a Felony, namely Stealing.
11. Under Section 306 of the Penal Code, the prescribed sentence for the offence of Breaking into a Building and Committing a Felony is seven (7) years. The trial court imposed a sentence of two (2) years. It is trite that this court can only alter the sentence of the trial court if it was based on wrong



principles or if record was not correct or legal. The Court of Appeal in the case of Ogolla S/O Owuor –vs- Republic, [1954] EACA 270, pronounced itself on this issue as follows:-

“The Court does not alter a sentence unless the trial Judge has acted upon wrong principles or overlooked some material factors”. To this, we would add a third criterion namely, “that the sentence is manifestly excessive in view of the circumstances of the case (R - v- Shershowsky (1912) CCA 28TLR 263).” See also Omuse - v- R (supra) while in the case of Shadrack Kipkoech Kogo - vs - R., Eldoret Criminal Appeal No.253 of 2003 the Court of Appeal stated

thus:-

“Sentence is essentially an exercise of discretion by the trial court and for this court to interfere it must be shown that in passing the sentence, the sentencing court took into account an irrelevant factor or that a wrong principle was applied or that short of these, the sentence itself is so excessive and therefore an error of principle must be interfered (see also Sayeka –vs- R. (1989 KLR 306)”

12. In this case the court, finds that there is no error or illegality or incorrectness or impropriety or regularly which he has been demonstrated on the sentence of twenty-four (24) months which was meted against the Applicant to warrant any interference by this Court. Owing to the nature of the offence the Applicant was charged with, the sentence imposed by the trial court was fair and within the law. However, I have noted that the Applicant was in custody from the time of his arrest to the date of sentence by the trial court but his period was not taken into consideration by the trial court. This is a period of nine (9) months and 27 days.
13. The upshot is that the Notice of Motion application dated 29<sup>th</sup> November, 2023 partly succeeds to the extent of considering time spent in custody during trial as provided for under Section 333(1) of the Criminal Procedure Code. The sentence of twenty-four (24) months to be computed with regard to the period of 9 months and 27 days that the Applicant stayed in custody during his trial.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 13TH DAY OF DECEMBER, 2024.**

**D. O. CHEPKWONY**

**JUDGE**

In the presence of:

Court Assistant – Sanja

Applicant in person – present

M/S Ndeda counsel for State/Respondent

