



**Muhonja v Republic (Criminal Revision E066 of 2024)
[2025] KEHC 15330 (KLR) (29 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15330 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL REVISION E066 OF 2024
JN KAMAU, J
OCTOBER 29, 2025**

BETWEEN

JACKLINE MUHONJA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Introduction

1. The Applicant herein was charged jointly with others with the offence of shop breaking and stealing contrary to Section 306(a) of the Penal Code, Cap 63 (Laws of Kenya). She was also charged with an alternative charge of handling stolen goods contrary to Section 322(1) and 322(2) of the Penal Code. She was convicted of the offence and sentenced to four (4) years imprisonment.
2. On 17th August 2024, she filed Notice of Motion dated 14th August 2024, seeking review of sentence. She averred that she was a first-offender and was remorseful for having committed the offence. She promised never to repeat the same offence if given a chance to re-integrate back into the society.
3. She asserted that she had under age children and there was no one to take care of them as her mother-in-law also passed on. She pointed out that she was a widow and had five (5) children. She, however, only mentioned two (2) children who were in PP2 and Grade 8.
4. She asked the court to review her sentence and grant her probation service order and/or Community Service Order to enable her go take care of her children.
5. Her Written Submissions were dated 26th February 2025 and filed on 27th February 2025 while those of the Respondent were dated and filed on 17th March 2025. The Ruling herein is based on the said Written Submissions that both parties relied upon in their entirety.



Legal Analysis

6. The Applicant sought for a less severe sentence especially a non-custodial sentence by dint of paragraph 2:5:1 Sentencing Policy Guidelines (Revised 2023). She pointed out that she was sentenced to four (4) years imprisonment and having benefitted from the remission envisaged under Section 46(1) of the *Prisons Act*, she was serving two (2) years, eight (8) months.
7. She asserted that the time she had spent in custody had served the purpose of sentencing as it had given her the opportunity to transform her entire life. She contended that the commission of the offence was brought about by poverty due to lack of employment and having been a housewife whose husband later died, she found herself in criminal involvement in a bid to try cater for her family needs.
8. She pointed out that at the time of the commission of the crime, she had no skills or any other avenues for income to cater for her five (5) children. She argued that there was no fear that she would repeat the same offence for there was no evidence of previous conviction (s) thus no propensity to commit any form of crime.
9. She placed reliance on the case of *Francis Opondo vs Republic*[2017]eKLR where it was held that in determining what was the appropriate sentence to meet out, the court had to consider such factors as the nature of the offence, the attitude of the accused person, prevalence of the type of offence, the seriousness of the offence, the circumstances under which the offence was committed, the effect of the sentence on the accused person and the fact that the maximum sentence was intended for the worst offenders of the class for which the punishment was provided. She invoked Article 10(3) of the ICCPR and further cited the case of *Douglas Muthaura Ntoribi vs Republic*[2014]eKLR where it was held that a good working prison should be able to reform convicts.
10. She explained that she had undergone rehabilitation programs which had transformed her life in all dimensions. She added that she had acquired grades in different life skills and could now be employed or be self-employed to cater for the needs of her children. She averred that she was ready to be re-integrated back to the society and utilise the skills she had learned while in safe custody (sic).
11. She further invoked Article 50(2) of *the Constitution* of Kenya, 2010 and Section 333(2) of the Criminal Procedure Code and relied on the case of *Ahamad Abolfathi Mohammed & Another vs Republic*[2018]eKLR where it was held that courts were obliged to take into account the period spent in custody before sentencing. She urged the court to consider the time she spent in custody during trial in the event it imposes a custodial sentence.
12. She further relied on several cases, among them, *Republic vs John Nganga Gacheru & Another*[2018]eKLR and *Maurice Amuliese Mutambi vs Republic*[2020]eKLR without highlighting the holding he relied thereon.
13. On its part, the Respondent invoked Section 306(a) of the Penal Code provides for imprisonment for seven (7) years and that it was mischievous for the Applicant who was already enjoying a far too lenient sentence to ask for a non-custodial sentence.
14. It placed reliance on the case of *Shadrack Kipchoge Kogo vs Republic* Criminal Appeal No 253 of 2003 (Eldoret)(eKLR citation not given) where it was held that sentence was essentially an exercise of the trial court and that for an appellate court to interfere it must be shown that in passing the sentence, the trial court took into account an irrelevant factor or that a wrong principle was applied.
15. It argued that the Trial Court took into account the evidence, the nature of the offence, the circumstances of the case, the relevant factors and the legal principles of the law in arriving at the



- sentence. It also cited the case of Republic vs Jagani & Another (2001) KLR 590 where it was held that the purpose of sentence was usually to disapprove or denounce unlawful conduct as a deterrence and assist in rehabilitation of offenders.
16. It also cited Section 333(2) of the Criminal Procedure Code and the case of Ahamad Abolfathi Mohammed & Another vs Republic (Supra) and submitted that it was mischievous for the Applicant who was enjoying a far too lenient sentence to ask for the benefit of the said Section 333(2) of the Criminal Procedure Code. It urged the court to dismiss the Applicant's application for lack of merit.
 17. It was trite that sentencing was at the discretion of the trial court and an appellate court could only interfere with the sentence under very specific circumstances. This position was re-emphasised by the Court of Appeal in Shadrack Kipchoge Kogo vs Republic(Supra).
 18. Be that as it may, the power of the court to exercise revisionary jurisdiction is provided for under Section 362 of the Criminal Procedure Code Cap 75 (Laws of Kenya) which states that:-

“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.”
 19. Section 306 of the Penal Code Cap 63 (Laws of Kenya) provides that:-

“Any person who:-

 - a. breaks and enters a school, house, shop, warehouse, store, office, counting-house, garage, pavilion, club, factory or workshop, or any building belonging to a public body, or any building or part of a building licenced 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.”
 20. The Trial Court sentenced the Applicant herein to four (4) years imprisonment. To the mind of this court, this was lenient in the circumstances as it had the option of sentencing her to seven (7) years imprisonment.
 21. A reading of the Trial Court's proceedings indicated that it took into consideration the period she had spent in remand during trial before sentencing her. It rendered itself as follows:-

“Court-Sees reports for Accused 1 which is negative. The community was not willing to welcome her back and have her re-integrated in fact they have threatened to lynch her and burn down her house. I have also considered Accused 1 mitigation and period in remand from 29th January 2024. Accused 1 to serve 4 years in jail.”
 22. The plea was also taken in Kiswahili, a language that the Applicant understood and she pleaded guilty. The facts were read to her in Kiswahili and she confirmed that the same were true. The exhibits were tendered in evidence and she was allowed to mitigate. The Trial Court meted out the sentence upon the Applicant herein guided by the negative Probation Report dated 20th March 2024 by Baraza Moses, Probation Officer Hamisi.



23. This court was satisfied as to the correctness, legality, propriety and regularity of the proceedings and the sentence that was meted out to the Applicant herein by the Trial Court. In this regard, therefore, this court was not persuaded that it should set aside the sentence that was imposed on the Applicant herein and her application for revision therefore failed.
24. The above notwithstanding, this court took the view that even if the Applicant had sought a reduction of the sentence under a Criminal Miscellaneous file, this court would have been reluctant to interfere with the decision of the Trial Court. Taking into account the remission period of one third (1/3), it was evident that the Applicant was to serve about two (2) years and seven (8) months. She had since completed one (1) year and about six (6) months of her sentence. She still had about one (1) years and one (1) month to clear her sentence. In the mind of this court, the sentence that was meted upon her was lenient in the circumstances as the community deemed her to have been a first- offender as she had not been brought before the court previously. She was suspected of recruiting juveniles to break into shops.
25. This court was alive to the fact that the Trial Court had noted that the community was not willing to welcome the Applicant back and had threatened to lynch her or burn her house. Directing her to serve probation for the remainder of her sentence in the community that was so hostile would not be prudent at this point. It was on that basis that this court addressed itself to her request to be released on a non-custodial sentence despite its jurisdiction having been to consider the merits or otherwise of the present application under Section 362 of the Criminal Procedure Code.

Disposition

26. For the foregoing reasons, the upshot of this court's decision was that the Applicant's application dated 14th August 2024 and filed on 17th August 2024 was not merited and the same be and is hereby dismissed. Her conviction and her sentence be and are hereby upheld as they were both safe.
27. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 29TH DAY OF OCTOBER 2025

J. KAMAU

JUDGE

