



**Wakio v Republic (Criminal Appeal E046 of 2024)
[2025] KEHC 15483 (KLR) (30 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15483 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL APPEAL E046 OF 2024
AN ONGERI, J
OCTOBER 30, 2025**

BETWEEN

NASHON MWATABU WAKIO APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from the conviction and sentence by Hon. A. M. Obura
(CM) in Voi CMCR Case No. E142 of 2024 delivered on 2nd April 2024)*

JUDGMENT

1. The Appellant pleaded guilty to the following charges;

Count I

Breaking into a building and committing a felony contrary to Section 306(a) of the Penal Code.

Particulars:

Nashon Mwatabu Wakio: On the 9th day of March 2024 at Kajire village Voi Sub-County within Taita Taveta County broke and entered into a shop of Diffence Sumwa and committed a felony namely theft and did steal therein one box of milk, one box of biscuits, msafi omo 500g, omo satchets 100g, sawa milking jelly 50ml, two bar soaps, maasai shuka, one bedsheet, one marvin hat, one bonds powder and a bag all valued Kshs. 5,950/= the property of Diffence Sumwa.

Count II

House breaking contrary to Section 304(1)(b) and stealing contrary to Section 279(b) of the Penal Code.

Particulars: Nashon Mwatabu Mwakio on the 30th day of March, 2024 at Kajire village, Voi Sub County within Taita Taveta County broke and entered the store of Daniel Karani and stole one grinder



machine, one sledge hammer and a motor vehicle jack all valued Kshs. 31,500/= the property of Daniel Karani.

Count III

Burglary contrary to Section 304(2) and stealing contrary to Section 279(b) of the Penal Code.

Particulars: Nashon Mwatabu Mwakio on the 30th day of March, 2024 at Kajire village, Voi Sub-County within Taita Taveta County broke and entered a dwelling house of Ruth Mwake with intent to steal therein and did steal from therein two mobile phones make Techno and Talshen valued Kshs. 6,700/= the property of Ruth Mwake.

2. The facts as presented by the Prosecuting Counsel were as follows:-
 - i. That on 9.3.2024 the complainant in Count I Defence Sumwa woke up and went to her shop. She had left it well secured and locked the previous night. She was shocked to find it open and broken into. 1 box Muki, 1 box biscuits, 2 bar soaps msafi Omo powder 500g, Omo sachets of 20 grams each, 50ml of Sawa milking jelly half a dozen, bond powder, Maasai shuka and marvin, cash Kshs. 500/= were missing. She reported to Police. Investigations started.
 - ii. On 31.3.2024 a report was made by one Ruth Mwake. She claimed that her house was broken into and she lost 2 mobile phones namely a Techno and Taisha which were charging in her house. A third complainant Daniel Karani also complained of having his property stolen when his house was broken into at night. He lost a grinder, motor vehicle jack and sledge hammer.
 - iii. Daniel followed foot steps which led him to the accused's house. He realized the shoes at the door had sole prints resembling the foot prints he followed. He used the accused's friend named Evans to tell him there is a lucrative job offer and asked him to avail himself. The accused went and as they were discussing the alleged job offer, the said Daniel and other villagers pounced on him and demanded that he takes them to his house. They proceeded there. They recovered the items belonging to the 3 complainants.
3. The Appellant was convicted on his own plea of guilt and having pleaded guilty to the charges, he has no right of appeal except on the sentence.
4. The Appellant was sentenced to four (4) years imprisonment on each of the three counts.
5. The Appellant filed the following amended grounds of mitigation:-
 - i. He stated that he was charged with the offence of breaking and stealing, contrary to Section 303 of the Penal Code Cap 63, and two counts of handling stolen property contrary to Section 322 of the Penal Code, for which he was convicted and sentenced to serve four years on each count.
 - ii. He expressed that he was very remorseful for the occurrence of the incident and deeply regretted it.
 - iii. He explained that the offence was committed due to the famine and drought in his county over many years, as well as his own poverty and lack of employment.
 - iv. The appellant stated that he is a married family man with a wife and one child, whom he left unborn and who was born while he was in custody serving his sentence.
 - v. He pointed out that he did not waste the court's time and government resources, as he had pleaded guilty.



- vi. He explained that he is the child of a single parent (his mother) and is the breadwinner for his family of five siblings: three brothers and two sisters, who all depend on him for their entire living.
 - vii. He prayed for concurrency of his sentence on both counts.
 - viii. The appellant assured the court that if given another chance, he would not offend again, fearing Almighty God, our creator.
 - ix. He further prayed that, should an eventual computation of three years or less be awarded, he be considered for a Community Service Order (C.S.O.) on probation, assuring the honourable court that he would never repeat the same mistake in his entire life. He noted that he was arrested at the age of 23 and was now 24 years old.
 - x. He prayed that the Court would consider his mitigating factors and be pleased to order concurrency of both counts of four years.
6. The sole issue for determination is whether the sentence meted upon the Appellant are lawful.
 7. The Appellant has advanced a plea in mitigation, articulating several factors for the Court's consideration
 8. . He expresses profound remorse for his actions and attributes the commission of the offences to the harsh socio-economic circumstances of famine, drought, and a lack of employment in his locality.
 9. He is a young man of 24 years, married with a child born during his incarceration, and serves as the sole breadwinner for his extended family, including his mother and five siblings. He highlights his guilty plea as a gesture that saved the court's time and valuable judicial resources.
 10. In light of these circumstances, he prays for the Court's leniency, specifically requesting that the sentences imposed on the three counts be ordered to run concurrently and, should the resultant sentence be three years or less, that he be considered for a non-custodial sentence such as a Community Service Order.
 11. The singular issue for this Court's determination is the lawfulness and appropriateness of the sentence meted out by the trial court.
 12. In exercising its appellate jurisdiction over sentencing, this Court is guided by the settled principle that sentencing is a discretionary power of the trial court and an appellate court will be slow to interfere with the exercise of that discretion unless it is demonstrated that the court acted on a wrong principle, overlooked a material factor, or imposed a sentence that is manifestly excessive in the circumstances of the case.
 13. In reviewing the sentence, this Court is also bound to consider the objectives of sentencing as encapsulated in Kenyan jurisprudence, which include retribution, deterrence, and rehabilitation.
 14. The sentence meted must be proportionate to the offence committed, considering the circumstances of the offender.
 15. Furthermore, the Judiciary Sentencing Policy Guidelines emphasise the need for courts to consider both aggravating and mitigating factors.
 16. In the present case, the aggravating factors are the serious nature of the offences involving breaking into and violating the sanctity of private homes and business premises, causing loss and insecurity to the victims.



17. The Appellant is a repeat offender, having been punished for a similar offence and it is apparent that he has not been rehabilitated by the previous sentence.
18. The total value of the stolen property, while not astronomical, is significant to the individual complainants.
19. However, these must be balanced against the compelling mitigating factors presented by the Appellant.
20. His genuine remorse is a significant factor in his favour. His plea of guilt is a substantial mitigating circumstance that must be accorded due weight, as it signifies acceptance of responsibility and saves the state the time and expense of a full trial.
21. Moreover, the Appellant's youth, and his dire personal and family circumstances as the sole provider are factors that lean towards a rehabilitative, rather than a purely punitive, approach to sentencing.
22. Regarding the structure of the sentence, the trial court's record indicates that sentences were imposed on each of the three counts. The Appellant's prayer for concurrency is well-founded in law.
23. Section 14 of the Criminal Procedure Code empowers the court to order that sentences for multiple offences run concurrently, particularly where the offences are founded on the same facts or form part of a series of offences of the same or similar character.
24. The three break-in incidents, while involving different complainants, occurred within the same locality and over a short period, suggesting a similar pattern of conduct.
25. In the interest of fairness and proportionality, it is appropriate to order that the sentences imposed on Counts II and III run concurrently with the sentence in Count I. This ensures that the Appellant's total period of incarceration is not crushing and retains a semblance of proportionality to his overall criminal conduct.
26. Concerning the Appellant's prayer for a non-custodial sentence, while his mitigation is powerful, the offences for which he was convicted are serious and prevalent in society, carrying a significant element of premeditation and a direct impact on the victims' sense of security.
27. A custodial sentence, in these circumstances, is not unlawful and serves the legitimate penal purpose of deterrence.
28. However, the period already served must be considered.
29. Having considered the totality of the circumstances, including the Appellant's mitigation, his plea of guilt, and the need for a sentence that is just and balanced, the Court finds that the custodial sentences imposed were lawful but that the failure to order concurrency rendered the overall sentence manifestly excessive.
30. Consequently, the appeal against sentence succeeds to the extent herein stated. The sentences imposed by the trial court are upheld.
31. However, it is hereby ordered that the sentences in Criminal Case No. E142 of 2024 for Counts II and III shall run concurrently with the sentence for Count I.
32. The Appellant shall therefore serve the sentence for Count I, which is four(4) years imprisonment and the sentences for Counts II and III shall be served concurrently with it and with each other.
33. For the avoidance of doubt, this order does not reduce the individual sentences but consolidates the period of imprisonment.



34. The Appellant is reminded that under Section 333(2) of the Criminal Procedure Code, the period he has spent in remand custody during the trial shall be deducted from his total sentence.

35. Orders to issue accordingly.

DATED, SIGNED AND DELIVERED THIS 30TH DAY OF OCTOBER 2025 IN OPEN COURT AT VOI HIGH COURT.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Millicent/Mabishi

..... for the Appellant

..... for the Respondent

