



**Sinzore v Republic (Criminal Miscellaneous Application E108 of 2024)
[2025] KEHC 18710 (KLR) (16 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18710 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL MISCELLANEOUS APPLICATION E108 OF 2024**

**JN KAMAU, J
DECEMBER 16, 2025**

BETWEEN

DICKSON SINZORE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein was charged with the offence of burglary contrary to Section 304(2) of the Penal Code Cap 64 (Laws of Kenya). He was also charged with an alternative charge of handling stolen goods contrary to Section 322 (1) as read with Section 322(2) of the Penal Code. He was convicted on his own plea of guilty on the main charge and sentenced to five (5) years imprisonment.
2. On 16th December 2024, he filed a Notice of Motion application of even date seeking a review of his sentence. He averred that he had spent two (2) years in prison and had learnt his lesson. He urged the court to consider releasing him based on the reconciliation report dated 9th August 2023 that was witnessed by the Chief and submitted to the Trial Court stating that he had reconciled with the Complainant.
3. His Written Submissions were dated 2nd May 2025 and filed on 3rd May 2025 while those of the Respondent were dated 24th June 2025 and filed on 27th June 2025. The Ruling herein is based on the said Written Submissions which both parties relied upon in their entirety.

Legal Analysis

4. The Applicant submitted that he was a first offender and remorseful for having committed the offence. He pleaded with the court to be lenient on him and consider reducing his sentence to the least prescribed one.



5. He contended that he was arrested at a young age and had not yet married. He pointed out that he had the responsibility of refreshing his shuttered dreams that had been ruined by the lengthy incarceration given that he was still a young man with a promising future. He stated that when he was arrested, he was young and was not aware of the consequences of crime. He pointed out that the two (2) years he had spent in custody had shaped his life. He promised never to engage in any criminal activities. He added that his Co-Accused, one Patrick Siringi, was released based on the reconciliation between him and the Complainant which was done before he was sentenced.
6. He placed reliance on Articles 50(2)(p) and 159(2) of *the Constitution* of Kenya, 2010. He also relied on the case of Jonathan Mutinda vs Republic [2004]eKLR where the appellate court stated that the trial court therein should have taken advantage of other remedies like community service where a petty traffic offender was sentenced to life imprisonment. He also cited the case of Muruatetu & Another vs Republic, Katiba Institute & 4 others (Amicus curiae) Petition No 15 & 16 of 2014 (2021) KESC 31 (KLR) where it was held that the court should be guided by the age of the offender, whether he/she was a first offender, whether he/she pleaded guilty, character and record of the offender, remorsefulness of the offender, the possibility of reform among other factors while sentencing an accused person.
7. On its part, the Respondent submitted that the sentence prescribed for the offence of burglary under Section 304(2) of the Penal Code was a maximum of ten (10) years imprisonment and, therefore, the Trial Court was lenient for having sentenced the Applicant to five (5) years imprisonment.
8. It placed reliance on the case of Benard Kimani Gacheru vs Republic [2002]eKLR where it was held that sentencing was the discretion of the trial court and that an appellate court would not interfere with sentence unless that sentence was manifestly excessive in the circumstances of the case or that the trial court overlooked a material fact or acted on a wrong principle.
9. It further cited the case of Republic vs Jagani & Another (2001) KLR 590 where it was held that the purpose of sentence was deterrence, rehabilitation and reparation for harm done to victims and the society in general. It submitted that sentence meted by the Trial Court was proper as the Probation Report indicated that the Applicant was a habitual offender and hence, he was not suitable for a non-custodial sentence. It was emphatic that the Applicant's sentence was lawful. It urged this court to dismiss his application.
10. It was trite that sentencing was a discretion of a trial court and that an appellate court could only interfere with the sentence under very specific circumstances. This position was re-emphasised by the Court of Appeal in Benard Kimani Gacheru vs Republic (Supra).
11. In the present case, the Applicant pleaded guilty to the offence of burglary contrary to Section 304 (2) of the Penal Code Cap 63 (Laws of Kenya). Section 304(2) of the Penal Code sets out the penalty for burglary as follows:-

“ If the offence is committed in the night, it is termed burglary, and the offender is liable to imprisonment for ten years.”
12. A perusal of the Charge Sheet herein showed that the offence was committed during the night. Therefore, in the mind of this court, the Trial Court was lenient in having sentenced the Applicant to five (5) years as it had the option of sentencing him to ten (10) years imprisonment.



13. Notably, Section 176 of the Criminal Procedure Code Cap 75 (Laws of Kenya) promotes reconciliation. It states as follows:-

“In all cases the court may promote reconciliation and encourage and facilitate the settlement in an amicable way of proceedings for common assault, or for any other offence of a personal or private nature not amounting to felony, and not aggravated in degree, on terms of payment of compensation or other terms approved by the court, and may thereupon order the proceedings to be stayed or terminated.”

14. However, as the offence herein amounted to a felony, this court was not persuaded that it should adopt the reconciliation that was filed at the Trial Court as an order of court and release the Applicant.

15. Taking into account the remission period of one third (1/3), it was evident that the Applicant had since completed two (2) years and about eight (8) months in prison and had remained with a few months to complete serving his sentence.

16. As the Trial Court had noted that he was not remorseful and in fact requested that he be jailed, this court did not find it prudent to interfere with the said sentence at this point.

17. Be that as it may, this court was mandated to consider the period that he spent in remand while his trial was on going in line with Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).

18. The said Section 333(2) of the Criminal Procedure Code provides that:-

“Subject to the provisions of section 38 of the Penal Code (cap 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code

Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody” (emphasis court).

19. Further, Clause 4.6.20 (ix) of the Judiciary Sentencing Policy Guidelines provides that:-

“The Sentencing Court shall be guided by the sentencing principles and objectives set out in Part I of these the Guidelines in all resentencing hearings. The following mitigating factors were set out by the Supreme Court as particularly relevant in a resentencing hearing:...

(ix) Time already spent in prison by the convict...”

20. The requirement under Section 333(2) of the Criminal Procedure Code was restated by the Court of Appeal in *Ahamad Abolfathi Mohammed & Another vs Republic* [2018] eKLR.

21. A perusal of the Charge Sheet showed that the Applicant was arrested on 14th March 2023. He did not appear to have been released on bond. He was sentenced on 17th April 2023. A perusal of the proceedings of the lower court showed that the Trial Court did not take into account the period the Applicant spent in custody during trial. This was a period that ought to have been taken into consideration pursuant to Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).



Disposition

22. For the foregoing reasons, the upshot of this court's decision was that the Applicant's Notice of Motion application dated and filed on 16th December 2024 was not merited and the same be and is hereby dismissed. The Applicant's conviction and sentence be and are hereby upheld as they were both safe.
23. However, the period he spent in custody during trial between 14th March 2023 and 16th April 2023 be and is hereby taken into account while computing his sentence in accordance with Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).
24. The Prison authorities be and are hereby at liberty to consider enlisting the Applicant for consideration of release on non-custodial sentence if he was a suitable candidate as the High Court was presently engaged in decongesting prisons pursuant to the directions of the Hon Chief Justice and President and Supreme Court of Kenya.
25. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 16TH DAY OF DECEMBER 2025

J. KAMAU

JUDGE

