



**Barasa v Republic (Criminal Revision E002 of 2025)
[2025] KEHC 11679 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11679 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL REVISION E002 OF 2025
WM MUSYOKA, J
JULY 31, 2025**

BETWEEN

EVANS BARASA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Revision is sought herein, vide a letter dated 14th February 2025. The accused person, now convict, Evans Barasa, had been charged with malicious damage to property. He was sentenced to serve 3 years imprisonment.
2. I am told the accused person has approached the complainant to seek forgiveness, and that that had also been captured in the pre-sentence report by the probation office. It is on that basis that revision is sought.
3. I was addressed orally on the matter on 16th July 2025. I was informed about reconciliation and compensation. It was also submitted that offence was a misdemeanour affecting damage to doors and windows. I was referred to Republic vs. Patrick Mburu [2019] eKLR and Republic vs. Fredrick Kiragu [2022] eKLR. I was invited to convert the sentence to a fine, or to even order compensation.
4. Sentencing is at the discretion of the trial court. Trial courts are uniquely placed to deal with it. Firstly, as they would have tried the matter. Heard and seen all the witnesses testify, inclusive of the accused person, and would have had a chance to gauge their demeanour. Secondly, trial courts are also better informed on the prevalence of incidence of the crime in question in a given locality, to assist evaluate on whether to give a custodial or non-custodial sentence.
5. I am invited to revise a sentence by a trial court. Jurisdiction to do so is granted to the High Court by sections 362 and 364 of the Criminal Procedure Code, Cap 75, Laws of Kenya. The basis for it is



the legality, correctness and propriety of the order or sentence, and the regularity of the proceedings leading up to it.

6. Malicious prosecution is an offence created under section 339(1) of the Penal Code, Cap 63, Laws of Kenya. It is a misdemeanour. The penalty prescribed is a maximum of 5 years imprisonment, and it is not mandatory. By virtue of section 26(3) of the Penal Code, its imposition may be substituted with a fine.
7. The sentence imposed, of 3 years, falls within what section 339(1) of the Penal Code prescribes. It has not been demonstrated that the same is illegal, irregular, incorrect or improper. The trial court acted properly, in imposing the sentence prescribed by the Penal Code.
8. Could discretion have been exercised to consider fine instead of imprisonment? Yes, it could. But it was the call of the trial court. There would be nothing improper with the court choosing one sentence over the other. The principal sentence prescribed is imprisonment, fine is an alternative.
9. From the material on record, it would appear that the intent of the accused was to strike terror into the heart of the complainant. The attacks that led to the damage were in 3 waves. One in the morning, the other in the afternoon, one in the evening. There was destruction of doors, windows, furniture and household items. It would appear the effort was to make the house unliveable. It could have been a case of constructive eviction.
10. A dwelling house is at the centre of everyday living. It is the place where personal property resides. The space around which lives are lived. The sanctuary where human beings retreat to for shelter from darkness at night, from rain and sun at daytime. It provides the comfort for daily life. It is the haven at which human beings find peace and quiet. An attack on a dwelling house is an attack to the very soul of the human dweller. Malicious destruction of it, however slight, strikes at the very essence and being of the owner and occupier. It is that serious.
11. The incident in question had the potential of rendering the complainant homeless, and, perhaps, that was the design. The trial court noted that the conduct that the convict indulged in was not something that should be tolerated by any right-thinking member of the society. The court also noted that there was a duty to protect the rights of the complainant. That is why there is law, and that is what the rule of law is all about. Given the background, the trial court was of the view that non-custodial measures would be a mockery of justice. I fully concur.
12. There is a suggestion that fine and compensation could be adequate for the offence. I do not agree. Impunity ought to be dealt with firmly. Imposing a fine or ordering compensation would allow the accused person to buy his way out of crime. It would not be just to the complainant. She is not looking for money, but protection. Compensation would not protect her from the impunity of the likes of the accused, and it would send the wrong message.
13. This is not an ideal case at all for revision. The trial court exercised discretion properly, for the sentence imposed was legal and correct, and the proceedings heading up to its imposition were regular. The best was to afford protection, from violence, is deterrence and that is what the trial court offered.
14. The application for revision is accordingly rejected. This revision file shall be closed. The trial file shall be returned to Port Victoria. Orders accordingly.

DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA, ON THIS 31ST DAY OF JULY 2025.

WM MUSYOKA



JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Ms. Nabulindo, instructed by DK Nabulindo & Company, Advocates for the applicant.

Mr. Antony Onanda, instructed by the Director of Public Prosecutions, for the Respondent.

