



**Chelagat v Republic (Miscellaneous Criminal Application  
E038 of 2024) [2025] KEHC 3111 (KLR) (5 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3111 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
MISCELLANEOUS CRIMINAL APPLICATION E038 OF 2024**

**RB NGETICH, J**

**MARCH 5, 2025**

**BETWEEN**

**FELIX KIPROP CHELAGAT ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant Felix Kiprop Chelagat jointly with another was charged with the offence of House breaking contrary to section 304(1)(a) of penal code and Stealing Contrary to section 279(b) of the *Penal Code*. The particulars of the charge were that the accused between 2<sup>nd</sup> June, 2024 and 9<sup>th</sup> June, 2024 at Budalangi area, Marigat location, Baringo South Sub-County within Baringo County, jointly with others not before court broke and entered into a dwelling house of Sally Chesire Kangogo and did commit a felony namely stealing, stole therein, one bed valued at Kshs.4,500/=, one mattress valued at Kshs.6,000/-, one metallic table valued at Kshs. 5,000/= one television 14inch valued at Kshs.7,500/=, twenty iron sheets valued at Kshs.20,000/= and assorted household utensils valued at Kshs.5,000/= all valued at Kshs.48,000/=the property of the said Sally Chesire Kangogo.
2. In the alternative, the applicant was charged with the offence of handling stolen property contrary to section 322(1)(2) of the *Penal Code*. The particulars of the charge were that the accused on the 22<sup>nd</sup> day of June, 2024 at around 1940hrs at Budalangi area, Marigat location, Baringo South Sub-county within Baringo county, otherwise than in the course of stealing dishonestly retained, one decoder valued at Kshs.2,000/-, one blanket valued at Kshs.1,000/= one lesa valued at Kshs.200/= and assorted household items valued at Kshs.1,500/= all valued at Kshs.3,700/=, the property of Sally Chesire Kangogo knowing or having reason to believe to be stolen property.
3. The Applicant pleaded guilty to the main charge and was convicted on his own plea of guilty. The trial court called for a pre-sentence report and in a ruling delivered on the 31<sup>st</sup> day of July, 2024, the applicant was sentenced to serve 4 years imprisonment.



4. The Applicant now prays for review of the remaining sentence to a non-custodial sentence. He states in his application that he is a first offender with no other criminal records and that he has sought forgiveness from the complainant and they have reconciled and that he is the sole breadwinner of his family of 3 young children under the age of 6 years and thus he is now uncomfortable them undergoing difficulties in getting their basic needs.
5. When the matter came up before court on the 1<sup>st</sup> October,2024, the applicant informed the court that he was jailed for 4 years for the offence herein and he is now remaining with 2 years.

### **Presentence Report**

6. This court called for social inquiry report which was filed on 6<sup>th</sup> February 2025. From the report, the applicant is the 3<sup>rd</sup> born child out of the 8 children of William Keitany and Rebecca Chelagat. From the report, the applicant sat for his KCPE in the year 2009 and attained 278 out of possible 500 Marks. He did not proceed to secondary school out of his own volition. He started to engage in casual labor within the community and he worked at a food kiosk and various construction sites up to the point of his arrest. The applicant states that he is married and blessed with one child aged 4 years old.
7. The Applicant admits the offence and indicated that he committed the offence as a result of the harsh economic times and that he needed to make quick money and at the time, he did not think about the consequences of his actions. He stated that he stole as a result of hunger and the need to make quick money. He stated that he tried to reconcile with the victim but she insisted that he returns the stolen iron sheets. He says he has already told his parents where the stolen items are.
8. The victim indicated that indeed the Applicant has asked for forgiveness but she will only forgive him if she is able to recover the stolen iron sheets. She stated that the father of the Applicant told her that they knew where the Applicant took the stolen iron sheets but they have not gone to pick them and return them to her. She stated that she had given them a chance to repay her while the matter was still at the police station but the Applicant and his family did not take the matter seriously. She believes they are not serious on returning the stolen iron sheets and given the short time the Applicant has been in prison, she is opposed to review of sentence.
9. The mother of the inmate indicated that she does not know anything about the stolen items and where the Applicant hid them since the offence occurred in Marigat and she lives in Ossen. She further added that she has no capacity to pay back the complainant hence she cannot commit herself to compensate the complainant. She still prayed that the Applicant be released to serve a non-custodial sentence and indicated that she will assist in his reintegration back home.
10. The local administration of Marigat indicated that they did not know the Applicant very well since he was not a long-term resident of Marigat area but had moved there for work.
11. The local administration of Tiriondonin where the Applicant comes from indicated that the Applicant is well known to them and that he was of good conduct prior to the offence. They did not oppose him being released early.

### **Response By State**

12. On 11<sup>th</sup> February,2025, when the matter came up for hearing in court, the prosecution counsel Ms. Bartilol submitted that they oppose the application for review of sentence for the reason that the time served by the Applicant in prison is too short in the circumstances and thus the application is premature. That from the report, the victim is opposed to non-custodial sentence for the reason that



the Applicant is not remorseful and he has not sought forgiveness and has not compensated for what he stole from the complainant.

### **Rejoinder By Applicant**

13. The Applicant in a rejoinder stated that while at the police station when he was arrested, he spoke to the complainant who had taken back Kshs.2,000/=, decoder and utensils. He stated that he had not returned the iron sheets and the complainant had stated that she will forgive him if he returns all her items. He stated that he had requested the complainant to allow him pay the iron sheets in instalments.

### **Analysis And Determination**

14. The applicant herein urges this court to exercise supervisory powers under Article 165(6) of *the Constitution* and revise his sentence to allow him serve noncustodial sentence for the remaining period of sentence. The applicant was sentenced to 4 years imprisonment for the offence of House breaking and stealing. He has served 8 months in prison and at the time of filing this application, he was remaining with 2 years.
15. I have considered sentiments by the local administration and applicant's family. I also take note of the fact that the applicant has served for a period of 8 months only in prison and is yet to learn any skill which may assist him if released. I also take note of the fact that the complainant is opposed to the applicant being granted a non-custodial sentence. In view of the fact that applicant has not learnt any skill in prison now, I do not find him suitable for non-custodial sentence now as there is risk of redivism. He has served a short period. It would to his benefit, the benefit of his family and society for him to be fully rehabilitated and empowered before being released so as to avoid the risk of reoffending once released. In view of the above, the application for review is declined.

### **Final Orders: -**

1. Application for review is dismissed.
2. The applicant may renew his allocation for review of sentence later.

**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 5<sup>TH</sup> DAY OF MARCH 2025.**

.....

**RACHEL NGETICH**

**JUDGE**

In the presence of:

Ms. Bartilol for State.

Applicant present.

Elvis/Momanyi – Court Assistants.

