



**Karengeka v Republic (Criminal Revision E026 of 2025)
[2025] KEHC 5993 (KLR) (14 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5993 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E026 OF 2025
RN NYAKUNDI, J
MAY 14, 2025**

BETWEEN

VICTOR KARENGEKA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged with Tempering with telecommunications plant contrary to Section 32(A) of the [Kenyan Information and Communication Act](#) Chapter 411A Laws of Kenya. The facts being that on the 13th day of December, 2024 at Marura Trading Centre in Moiben Sub-county in Uasin Gishu County, jointly with others not before the trial Court, intentionally and unlawfully tempered with telecommunication plant namely American Towers Corporation Ltd (Chepkoilel) site and stole MCMK transmission power cables valued at Kshs 217,546.60/= the property of American Towers Corporation Ltd.
2. The records show that the transmission power cables, the property of American Towers Corporation was recovered immediately after the theft by the Applicant. It is also clear from the Trial Court records that the Applicant was sentenced to a fine of Kshs 100,000/= in default one year imprisonment. This was after entering a plea of guilty based on the facts of the offence in which now a conviction was duly imposed by the Learned Trial Magistrate.
3. In the instant Application, the Applicant has also relied on the Probation Officer’s report which is responsive if the recommendations is anything to go by as captured in the following language;

“Your Lordship, the inmate readily accepts responsibility for the offence committed and show remorse. He promises to be a law-abiding citizen. He is ready and willing to serve the



remaining part of his sentence within the community. The family is willing to receive him back at home.”

4. This Application cannot escape the Application of the principles in *Francis Karioko Murutetu & Another vs Republic*, Petition No. 15 of 2015 set out the following guidelines with respect to sentencing;

- “71. ...the following guidelines with regard to mitigating factors are applicable in a re-hearing sentence for the conviction of a murder charge;
- a. Age of the offender;
 - b. Being a first offender;
 - c. Whether the offender pleaded guilty;
 - d. Character and record of the offender;
 - e. Commission of the offence in response to gender-based violence;
 - f. Remorsefulness of the offender;
 - g. The possibility of reform and social re-adaptation of the offender.
 - h. Any other factor that the Court considers relevant.”

5. This Court is also bound to place reliance on the Constitutional imperatives more so Chapter on the Bill of Rights. The *Constitution* in Article 28 and 29 provides as follows;

- “28. Every person has inherent dignity and the right to have dignity respected and protected.
29. every person has the right to freedom and security of the person which includes the right to be;
- a. deprived of freedom arbitrarily or without just cause.”

6. Individual liberty is one of the most fundamental of human rights recognized in International Human Rights instruments entrenched in Article 2 Subsection (5) (6) of the *Constitution* which must be read mutatis mutandis with our very own Supreme Law. As a consequence, there is merit to review the custodial sentence and have it substituted with the community service order at Township Primary School for the remainder of the period of 3 months and 3 weeks. It so ordered.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 14TH DAY MAY OF 2025.

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R.NYAKUNDI

JUDGE

