



**Kipkorir v Republic (Criminal Revision E050 of 2025)
[2025] KEHC 6016 (KLR) (12 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6016 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E050 OF 2025
RN NYAKUNDI, J
MAY 12, 2025**

BETWEEN

ISMAIL KIPKORIR APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein was charged with an offence of Stealing of motor vehicle contrary to section 278A of the *Penal Code*. The Particulars of the offence are that on the 24th day of October 2023 at Mailinne area Turbo sub-county within Uasin Gishu county stole a motorcycle boxer 100 red in colour Registration number KMFP 908H valued at Kshs 235,000/= the property of Mildred Salome Keya.
2. The Applicant after a full trial was found guilty, convicted and was sentenced to serve 1 year imprisonment. Thereafter he applied for review of his sentence to be substituted with that of non-custodial sentence under the provisions of community service order. In his remarks, the probation officer submitted his report which I find responsive in the following language: The inmate takes full responsibility of the offence committed, he is remorseful and willing to serve noncustodial sentence. Your Lordship, the inmate readily accepts responsibility for the offence committed and shows 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 home. Your Lordship, Following the above information, The inmate is willing to perform unpaid public work. We therefore recommend that he be allowed to carry out the same at Baharini Police Station for the remaining period of 4 months.

Determination

3. The question I ask myself is whether the case at bar has met the threshold to review the custodial sentence and have it substituted with that of non-custodial under the community-based approach



as recommended by the Probation Officer. First and foremost the statutory scheme of sentencing in Kenya provides for imposition of non-custodial sanctions for example, payment of a fine, probation order, community service order, reconciliation, reparation, suspended sentences, etc. In all cases in which the court is by law at liberty to impose non-custodial sentences, this orders should receive consideration by the trial court and only serve custodial sentence as a remedy of last resort.

4. I am persuaded in dealing with this application on review of sentence to keep in mind the principles in *R vs Cecil Gobson*(1975) 13 JLR 2007, In which the court observed “ It should never at any one time be thought that a convicted person standing in a dock is no more than an abstraction. He is what he is because of antecedents and justice can only be done to him if proper and due regard is heard to him as an individual, and a real attempt is made to deal with him with reference to the particular circumstances of his case. To ignore these is to ignore an essential consideration in the purpose of punishment namely the rehabilitation of the offender.
5. It is trite that sentence imposed by trial court should be proportionate to the gravity of the offence and speaking to the degree of responsibility of the offender. Therefore, it is my view that sentences should not be unduly harsh, punitive, or excessive in the sense of being incapable of justification within the sentencing policy guidelines of the judiciary 2023. In the case at bar going by the recommendation by the probation officer I am convinced to exercise the parameters of review by substituting the custodial sentence with that of non-custodial for the Applicant to perform public works at Baharini Police Station for the remaining period of 4 months.
6. It is so ordered

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 12TH DAY OF MAY 2025.

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R. NYAKUNDI

JUDGE

