



**Wanjala v Republic (Criminal Revision E029 of 2025)
[2025] KEHC 6025 (KLR) (12 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6025 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E029 OF 2025
RN NYAKUNDI, J
MAY 12, 2025**

BETWEEN

JOSEPH WANJALA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant is charged with the offence of theft of motor vehicle parts contrary to Section 279 (C) of the *Penal Code*. The particulars of the offence are that on the night of 4th December, 2024 at Jabali Moi’s Bridge sub-location, Soy sub county within Uasin Gishu county jointly with another not before court stole one axel shaft valued at Kshs 65,000 from motor vehicle Registration No KAA xxxV Mistubishi, lorry track the property of Phillemon Bor.
2. The Applicant pleaded not guilty thereafter convicted and sentenced to 1 year imprisonment. He has now approached this court to review the sentence and in doing so the Probation Officer’s Report is responsive towards no-custodial sentence. It captures the recommendation as follows:

“Your Lordship the inmate readily accepts responsibility for the offence committed and shows remorse. He promises to be a law-a binding 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 intimate is willing to perform unpaid public work. We therefore recommend that he be allowed to carry out the same Moi-Bridge Township Primary School for the remaining Period of 3 months.

Determination.

3. This application on review of sentence is anchored under Section 357, 362, & 364 of the *Criminal Procedure Code*. The same is to be read in conjunction with Article 50 (2) (P) & (Q) and 6(A) & (B)



of the Constitution. The International Instruments under Article 2(5) & (6) of the Constitution being part of our sources of law also provide the much needed provisions in an attempt to justify review of sentence. What the probation officer's report advocates for is the rehabilitation and reformation of the Applicant by reviewing of the custodial sentence and have it substituted with community-based sanctions.

4. The reformative theory is based explained by the persuasive dicta from the Supreme Court of India in Mohammed Giasuddin vs State of Andhra Pradesh (1977) 3 SCC287 where the court states as follows:

“if every saint has a pas, every sinner has a future and it is the role of law to remind both of this. The Indian legal genius of old has made a healthy contribution to the world treasury of criminology. The drawback of our criminal process is that often they are built on the bricks of impressionist opinions and dated values, ignoring empirical studies and deeper researches. Progressive criminologist across the world will agree that the Gandhian diagnosis of offenders as patients and his conception of prisons as hospitals mental and morals is the key to the pathology of delinquency and the therapeutic role of punishment. The whole man is a healthy man and every man is born good. Criminality is a curable deviance. The morality for the law may vary, but it is real. The basic goodness of all human being is a spiritual action, a fall-out of the of the advaita of cosmic creation and the spring of correctional thought in criminology.

5. This court also will be guided by the principles in Bernard Kimani Gacheru vs R (2002) ekL . The trial courts and those with jurisdictions to entertain review or appeal must bear in mind the guidelines in Yardley v Betts (1979) 22 SASR 108 at 112-113 in which the court pronounced itself as hereunder: “To say that the criminal law exists for the protection of the community is not to say that severity is to be regarded as to sentencing norm. Times and conditions change and the approach of judges to their task must be influenced by contemporary conditions and altitudes. But public concern about crime however understandable and soundly based, must never be allowed to bring about departure by the courts from those fundamental concepts of justice and mercy which should animate the criminal tribunals of civilized nations...The protection of the public must remain our first concern, but if, consistently with that, we can in our compassion, assist another human being to avoid making ruin of his life, we ought surely to do so.”
6. I have therefore reviewed the record and on the strength of the Probation Officer's Report, the custodial sentence be and is hereby substituted with a non-custodial sentence to be served on CSO at Moi's Bridge Township Primary School.
7. Orders accordingly

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

R. NYAKUNDI

JUDGE

