



**Kibet alias Dominic v Republic (Criminal Revision E191 of 2025)
[2025] KEHC 11018 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11018 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E191 OF 2025
RN NYAKUNDI, J
JULY 24, 2025**

BETWEEN

MORGAN KIBET ALIAS DOMINIC APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Coram: Before Justice R. Nyakundi

M/s Sidi for the State

1. The Applicant was charged with the offence of stealing. The brief facts are on the 19th day of May 2025 at around 0500hrs at Kapchagir village in Moiben sub county within Uasin Gishu county, stole one 6kgs gas cylinder, one mattress, eleven pairs adult male socks, two pieces of male innerwear, four pieces of sufuria (assorted sizes), three pieces bedsheets, one piece of towel, two litres of cooking oil, six pieces plates, six piece cups, one dozen milking jelly 25ml, one dozen milking jelly 50ml, one piece body lotion, two pieces bar soap, six pieces sawa bathing soap, one pair crocks shoes, six pieces handkerchiefs, four pieces of face towel, one solar powered security light, one itel phone, cigarrrets(on packet Rotmans, two packets Pollmall) all valued at Kshs. 51, 845 the property of Ian Kimutai Tanui.
2. He pleaded guilty to the offence, was convicted and sentenced to 1 year imprisonment. He has now applied for his sentence to be reviewed and the reminder of the sentence of 6 months' probation at Torochmoi Dispensary in Moiben sub county

Decision

3. This application is based on the provisions of the [criminal procedure code](#) namely Section 357, 362, 364 as read with 382. The [constitution](#) also provides under Art 50 (2) (p) (q) as follows:



- (p) to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishments for the offence has been changed between the time that the offence was committed and the time of sentencing; and
 - (q) if convicted, to appeal to, or apply for review by, a higher court as prescribed by law.
 - (3) if this Article requires information to be given to a person, the information shall be given in language that the person understands.
4. The same constitution in Art 50 (6) (a) (b) expressly states as follows:
- A person who is convicted of a criminal offence may petition the High Court for a new trial if-
- a. The person's appeal, if any, has been dismissed by the highest court to which the person is entitled to appeal, or the person did not appeal within the time allowed for appeal; and
 - b. new and compelling evidence has become available.
5. This application is based on the social inquiry report dated 22nd July 2025 carried out by the probation officer which contextualized the issues as follows:

Sources of information prison records, inmate families, community and the complainant

Current Family And Personal History

Family Background.

The inmate was born to Joseph Kitembe Motum and Betty Nyongesa who are residents of Merewet in Mumetet location in Moiben Sub County. He is the first born in a family of three (3) children. He hails from an extended family setup with his parents sitting on ½ acres piece of ancestral land. The family engages in maize farming largely for subsistence use. His father is a casual worker in Eldoret while the mother is largely at their rural home practicing farming. Before this incidence, none of the family members had criminal records. He seems to enjoy strong family ties as demonstrated by his family members who came forward to vouch for his early release. His father has promised to take a keen interest in his affairs by welcoming him back home and attach him accordingly for apprenticeship in his painting trade.

Personal History

When interviewed Morgan who also goes by the name Dominic stated that he was born in 2003. He has incomplete Primary school level of education having attended Mumetet Primary school in Moiben up to class 8 but never did his KCPE examinations. His failure to complete his education was traced to negative peer influence and lack of parental control. He engaged in menial jobs supporting his parents and later pursued casual jobs for income. Having stopped attending school he fell prey to delinquent peers with whom they were linked to petty theft. The inmate lacked skills training but claims that he had acquired basic skills in painting by association. He is unmarried with no familial responsibilities. Prior to his arrest, he resided from Kapsoya area in Eldoret where he served as a shamba-boy to one Chebet who largely stays outside the country. The inmate who denies history of alcohol and drug addiction says this was his first ever conviction. During our interaction, he confirmed being in good health.



Prison Assessment Rehabilitation And Re-intergration

Prison authorities at Eldoret GK Prison gave the inmate commended the inmate's behavior in custody. They consider him low risk offender capable of benefiting from community interventions hence endorsed his early release. During his time in custody, he has been deployed for farm work received psychosocial support services and enrolled for spiritual uprightness. If released, the inmate hopes to join his family in Moiben and put his painting skills in practice to eke out a living. He has promised to desist from crime and remain law abiding. The area chief and village elder welcome the idea of his early release and have promised to be part of his supervision.

Offenders' Attitude Towards Non-custodial Sentence

The inmate regrets his previous conduct and promise to change. He is receptive to community-based court sanction and willing to submit to conditions of community service orders.

Conclusion

Your Lordship, the inmate before court regrets his criminal history and promise to change. Our assessment of his criminogenic risk factors revealed that the inmate had antisocial personality pattern, pro-criminal attitude and association with negative peers. We intend to tackle these short-comings through periodic psychosocial support services alongside payback to the community through proposed community service order. Local administrators interviewed endorsed his early release confirming absence of perceived or eminent hostility in the community. They have assured of their support to his community supervision and monitoring. His immediate family has made an undertaking to play active role in supporting his community reintegration.

Prison authorities at Eldoret believe that the inmate qualifies for immediate community re-entry going by the positive record he has registered so far in custody. The inmate is willing to submit to community service orders and stay away from crime.

Recommendation

My Lord, the above presentation indicates that the inmate has a stable family which will be invaluable asset in aiding his community supervision and rehabilitation. He enjoys positive community acceptance and his home situation is receptive. Therefore, we find him suitable for early release on Community Service Orders for the remainder of his term (6 months) to serve at Torochmoi Dispensary in Moiben Sub County under the supervision of the Nurse-in-Charge at the facility

6. The role of non-custodial sentence should underpin our penal system in which custodial sentence remains a recourse of last resort in punishing offenders. The sentence policy guidelines of the judiciary 2023 provides a framework in which Judicial discretion should be exercised to arrive at a fair and proportionate sentence on individualized circumstances. The objectives and principles of sentencing are well articulated and defined as follows:
 - a. Retribution: to punish the offender for his/her criminal conduct in a just manner.
 - b. Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.



- c. Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law-abiding person.
 - d. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.
 - e. Community protection: to protect the community by incapacitating the offender.
 - f. Denunciation: to communicate the community's condemnation of the criminal conduct.
 - g. Reconciliation: To mend the relationship between the offender, the victim and the community.
 - h. Reintegration: To facilitate the re-entry of the offender into the society.
7. In documented research by Chrispinus Adenya Aben entitled Factors Influencing Success of Non-Custodial Sentence in Kenya: A Case of Kilifi District in Kilifi County 2011. He made the following observations: First and foremost, prison population around the world is increasingly placing enormous financial burdens on governments. There is growing recognition that imprisonment does not achieve some of its most important stated objectives, as well as being harmful to offenders, families and in the long term to the community (UNODC, 2006).
 8. It came out clearly from his research; Supervision is an essential component of community-based correction with the primary objective of enforcing compliance with the conditions of release to minimize risk to the public and to re-integrate the offender into the law-abiding lifestyle. Lax supervision and failure to deal firmly with those who persistently violate the terms of release can bring an entire system into disrepute in criminal justice. (Killinger GG and Cromwell P.F, 1990). "The law is without doubt a remedy for great evils, yet it brings with it evils of its own". (Subbrano V.C.G. 1993). There are three primary gateways in the criminal justice. The first is at the police at the initial stage of apprehension, the second is at the court after the determination of guilt and passing of a sentence and the third is the gateway to the community at the conclusion of the sentence (Johnson R, 2003).
 9. Rule 8.2 of the Tokyo rules on non-custodial affirm that courts or sentencing authorities may dispose off cases in any of the following ways-verbal sanctions, admonitions, reprimands and warning, conditional discharge, status penalty, economic sanctions and monetary restitution, restitution to the victim or compensation order, confiscation or expropriation, suspended or deferred sentence, probation and judicial supervision, community service order, house arrest and any other non-institutional treatment. Supervision is critical in realization of sentencing objectives. This is operationalized as poor and laxed supervision leads to reconviction and abscondism. The quality and number of contacts between the offender are key in reforming, re-integrating the offender. The caseload per officer and the frequency of contacts between the officer and the probationer determines the level of intensity of supervision based on the risk category of the probationer. The community plays key role in having offenders change. Community attitude, home environment is deterministic of offender's potential to change.
 10. Time has come to re-conceptualize the effectiveness of custodial sentencing to promote a clear, fair, uniform and consistent approach by all levels of courts. A theme of any review of sentence must not lose sight of the objectives and sentencing. Am of the consider view that an effective sentence must also serve to communicate to society that justice has been done and the wrong doer punished and denounced for his or her conduct. Generally speaking, over time, I have been involved in the practice of law as a trier of criminal cases they are no probative evidence that the harsher, punitive or severe the sentence does provide greater marginal deterrent effects.



11. Sentencing is a discretionary process mainly exercised by trial courts who have the advantage to appreciate the circumstances of the offence and how it applies to the sentencing objectives and principles within the regulatory framework of our [sentencing policy guideline 2023](#). This court is being asked to review the custodial sentence and have it substituted with non-custodial sentence. As I appreciate the record and the impugned decision on sentence I bear in mind that this is one area of law which involves the weighing of many complex factors, it will always be possible to point to some factors which should arguably have been taken into account or left out of account; even if they should have been, the court should not intervene unless it is convinced that this would have resulted in the decision going the other way.
12. There is a big outcry amongst our communities and society at large on the level of inconsistency, disparity, unfairness, and disproportionate verdicts on sentence being imposed by the trial courts and even on appeal which do not reflect the sentencing objectives and principles in our policy document. As if that is not enough the letter and spirit of our sentencing scheme seems to depart from the legislature's intention and vision in the criminal administration of justice. Sentencing in Kenya ought to be fair and proportionate to the crime being prosecuted by the state as against the accused persons or defendant. These canons on fair and proportionate sentence require that: All relevant factors of a case must be considered including the seriousness of the offence, the impact on the victim and others affected by the case, and the circumstances of the offender; Sentences should be no more severe than is necessary to achieve the appropriate purposes of sentencing in each case; Reasons for sentencing decisions must be stated as clearly and openly as circumstances permit; Sentencing decisions must be made lawfully and sentencers must have regard to any sentencing guidelines which are applicable; People should be treated equally, without discrimination; and Sentencing decisions should treat similar cases in a similar way, assisting consistency and predictability
13. It is vital that the test of the seriousness of the offence when weighed with the applicant being a first offender, he pleaded guilty to the allegations on stealing contrary to section 268 as read with 275 of the [penal code](#) and the effect of mitigating factors renders this court to review the sentence for purposes of rehabilitating the offender as a consequence he is placed in community service order for 6 months at Torochmoi Dispensary in Moiben sub county

DATED, DELIVERED AND SIGNED AT ELDORET THIS 24TH DAY OF JULY 2025.

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R. NYAKUNDI

JUDGE

