



**Kibet v Republic (Criminal Revision E192 of 2025)  
[2025] KEHC 11071 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11071 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E192 OF 2025**

**RN NYAKUNDI, J**

**JULY 24, 2025**

**BETWEEN**

**EDWIN KIBET ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant was charged with the offence of stealing stock. The brief facts are on the 11<sup>th</sup> day of February 2025 at Sigowet village, Segero sub location Soy sub county within Uasin Gishu did steal a sheep valued at Kshs. 18,000 Eighteen thousand shillings the property of Thomas Ruto
2. He pleaded guilty to the offence, was convicted and sentenced to 12 months imprisonment. He has now applied for his sentence to be reviewed and the remainder of the sentence of 3 months' probation at Assistant Chief's office Kapngetuny sub location.

**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:
  2. ....
    - (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 21<sup>st</sup> 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 Enoch Biwott and Rosaline Chepkosgei who are residents of Sigawet in Segero location in Soy Sub- County. He is the second born in a family of Seven (7) children. He hails from a nuclear family setup with his parents sitting on 0.7 acres piece of acquired land. The family engages in maize farming largely for subsistence use. His father works as a turn-boy while the mother engages in casual jobs and small-scale farming. The family had no prior criminal records. His family members who have occasionally visited him in custody are willing to be part of his community supervision.

##### Personal History

During interview Edwin stated that he was born in 2004 at Segero in Soy where he grew up. He attended Makungi Primary school up to class 8 but dropped out of school before sitting KCPE examinations. His failure to complete his education was attributed to negative peer influence, poor performance and lack of sufficient parental control. He later ventured into boda boda business as a rider within Soy. The inmate has no skills training to make him competitive in job market. He is unmarried but claims to have sired a child who is under custody of his alleged estranged lover. The inmate admits to be a social partaker of alcohol but denies history of drug abuse. He says this was his first time he was interacting with criminal justice system. We were unable to establish any records of his previous conviction. During our interaction. he was in stable health but reported a history of respiratory complication in custody.

##### Prison Assesment Rehabilitation and Re-intergration

Prison authorities at Eldoret GK Prison gave a positive account of the inmate. They stated that the inmate had carried himself with much decorum and civility. They indicated that due to his constant health challenges, he was yet to be committed to skills training commended the inmate's behavior in custody. They are of opinion that he possesses little to no risk to the society hence they would recommend his early release.

The inmate stated that if released, he hopes to join his family in Segero, Soy sub county and engage in constructive activities. He has vowed to check his excessive drinking habit. His family has promised to be part his resettlement back in the community by providing his accommodation, meeting his welfare needs in the interim and support his empowerment.



Local administrators have no qualms in having him released back in the community early than expected.

#### Offenders' attitude Towards Non-custodial Sentence

The inmate takes responsibility for the offence committed and pleads for a chance to serve the remainder of his sentence within the community. He claims to have recovered from health challenge and he is receptive community service.

#### Conclusion

My Lord, the youthful inmate in the instant case takes responsibility for the offence committed and prays for a chance to reform within the community. Our assessment of his criminogenic risk factors revealed that the inmate had a history of over-indulgence in intoxicating substances particularly alcohol, had association with negative peers and lacked skills training to make him competitive in seeking self-reliance. During his period on proposed non-custodial measures, we intend to engage him in targeted counselling session even as he pays back to the community he offended. We shall tap into the goodwill of local and his family members in ensuring successful implementation of community measures.

Prison authorities at Eldoret Prison were positive about his general discipline and believe that he poses no risk to the society. He is willing to submit to community service orders.

#### Recommendation

Your Lordship, the above findings indicates that the inmate has a stable family who are willing to welcome him and ready to be part of his community supervision and rehabilitation. He is not regarded as a threat and his immediate release is unlikely to pose any danger to him. Therefore, we find him suitable for early release on Community Service Orders for the remainder of his term (3 months) to serve at Assistant Chief's office Kapngetuny Sublocation under the supervision of the Assistant Chief.

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 lax 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 offender’s 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 is 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 may 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 on 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 requires 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 stock contrary to section 278 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 3 months at Assistant Chief's office Kapngetuny Sublocation.

**DATED, DELIVERED AND SIGNED AT ELDORET THIS 24<sup>TH</sup> DAY OF JULY 2025.**

**R. NYAKUNDI**

**JUDGE**

Representation:

M/s Sidi for the state

