



**Kipchirchir v Republic (Criminal Revision E194 of 2025)
[2025] KEHC 11015 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11015 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E194 OF 2025
RN NYAKUNDI, J
JULY 24, 2025**

BETWEEN

JOSHUA KIPCHIRCHIR APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged of stealing. The brief facts are on the 7th day of February 2025 at unknown time at Kaptik village in Moiben sub county within Uasin Gishu jointly stole water pump make DCM190C valued at Ksh. 22,000/= the property of David Kiprono. He pleaded guilty to the offence convicted and sentenced to 2 years' imprisonment. He has now applied for his sentence to be reviewed and the reminder of the sentence of 13 months' probation at Chief's Office Meibeki

Decision

2. 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.



3. 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.

4. 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 Philip Cheruiyot and Pauline Chepkorir who are residents of Kaptik area in Moibeki location in Moiben Sub county. He is the second born in a family of nine (9) siblings. He hails from a nuclear family which sits on 3 acres of ancestral land. The family engages in maize farming both for subsistence and a form of cash crop. His father is a pastor at a local Seventh Day Adventist Church Kaptik. Before this incidence, none of the family members had engaged with criminal justice system. He seems to enjoy strong family ties with his family members coming forward to vouch for his release. His father has promised to support his empowerment by enrolling him for driving trade.

Personal history

Joshua was born 28 years ago in 1997. He has incomplete Secondary school level of education having first attended Sasitwa Primary school where he did his KCPE examinations in 2015. He joined Lemoru Secondary school but dropped out in Form 2 due to negative peer influence, poor performance and truancy. He ventured in mitumba (second-hand clothes) business as a means of eking out a living until 2019 and later engaged in casual jobs and practiced vegetable farming. He is unmarried but claims he sired a child who is currently 7 years old. Our inquiry established that this is his first conviction. Before his confinement, he was a social drinker but denies history of drug abuse. During our latest interaction, he was in good health and did complain of any serious health challenges.

Prison Assesment Rehabilitation and Re-intergration

When contacted, Prison authorities affirmed that during his time in prison, the inmate has been of good behavior and submitted to prison routine. They consider him low risk who is able to reform within community structures and recommend his early release. He has undertaken psycho-education sessions and trained on effects of crime. The inmate regret keeping wrong company who influenced into crime and assures of change of behavior.

Offenders' attitude Towards Non-custodial Sentence

The inmate is receptive to community-based court sanction and he is willing to submit to community service orders.

Conclusion



Your Lordship, the youthful offender before court regrets his previous involvement in crime and is willing to change. Prior to his confinement, he was prone to negative peer influence which may have lured him into criminal behavior. Local administrators who were earlier against non-custodial measures have assured that the community in question will tolerate him and give him a chance to reform. They however expect him to reciprocate by remaining law abiding.

Prison authorities at Eldoret regard him as low risk and endorsed community rehabilitation. Throughout his incarceration, the inmate has adhered to prison regulations and demonstrated high level discipline. He is willing to submit to community service orders.

Recommendation

My Lord, the aforementioned indicates that although the inmate was initially rejected by his community due to his criminal past, he is currently welcome back home. His family members and local administrators endorsed his consideration for early release. Therefore, we find him suitable for early release on Community Service Order (CSO) for the remaining period of his sentence (13 months) to serve at Chief's Office Meibeki under the supervision of the Chief (Stephen Cheron).

5. 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.
6. In a 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).
7. 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 VCG 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*).

8. 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.
9. 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.
10. 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.
11. 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 legislatures 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

12. 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 section 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 13 months at Chief's Office Meibeki.

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

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R. NYAKUNDI

JUDGE

M/s Sidi for the state

