



**Komen v Republic (Criminal Revision E189 of 2025)
[2025] KEHC 10980 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10980 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E189 OF 2025
RN NYAKUNDI, J
JULY 24, 2025**

BETWEEN

MATHEW KIPRUTO KOMEN APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Representation:

M/s Sidi for the state

1. The Applicant was charged with the offence of cheating. The brief facts are that on the 6th day of May 2025 at Kesogon village in Soy sub county within Uasin Gishu county, Mathew Kipruto Komen by means of fraudulent trick obtained Ksh. 5,000 from Gladys Jepwambok.
2. He pleaded guilty to the offence, was convicted and sentenced to serve 1 year imprisonment. He has now applied for his sentence to be reviewed and the remainder of the sentence of 7 months' probation at Kamaingon Assistant Chief's Office.

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 Article 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 before this Honorable Court is the sixth-born in a family of eight children to Joseph Rotich and Ann Komen. He hails from a generally cohesive family that relies on small-scale farming and modest business activities for sustenance. None of his siblings or immediate family members have a history of criminal conduct, and he is described as sociable and maintaining positive relationships within the family. This inquiry has established that the inmate is welcome at home, with his family members expressing willingness to support his reintegration and rehabilitation.

Personal history

The inmate was born in 1986 in Tembererwo Village, Kewo Location. He attended Kipendo Primary School and sat for his KCPE in 2000 but did not proceed to secondary school due to financial constraints. Thereafter, he engaged in peasant farming and casual labor to support himself. Before his arrest, he was working as a casual laborer at the homestead of one Hellen Misoi in Merewet. He is married to Fridah Jerotich, and they have five children, all of whom are in school. The family resides in a modest two-room semi-permanent house on his parents' land. However, further inquiry revealed that prior to his arrest, the inmate had been cohabiting with another woman, Mercy Cherobon. The inmate is in good physical health, though he admits to consuming alcohol. This inquiry further established that he lacks formal training or professional qualifications and relies entirely on casual employment for his livelihood. Notably, he is a first-time offender.

Prison Assessment Rehabilitation And Re-intergration

During his incarceration, the inmate was assigned to the prison farm, where he acquired basic farming skills. He also received counseling and underwent training on the consequences of crime, demonstrating a strong willingness to reform. The inmate has expressed sincere remorse for his actions and affirms that he has experienced significant personal transformation. Prison authorities hold him in high regard and support the prospect of his early release.



Offenders' Attitude Towards Non-custodial Sentence

The inmate has admitted to committing the offence and states that his time in prison has served as a turning point in his life. He is appealing for a non-custodial sentence, emphasizing his role as the primary breadwinner for his family.

Conclusion

Your Lordship, inquiries from the prison authorities indicate that the inmate has demonstrated commendable discipline and shown significant progress toward rehabilitation. Furthermore, both the complainant and local administrators are of the view that the inmate has learned his lesson and may now be considered suitable for community-based sanctions.

Recommendation

Considering the positive report from the prison authorities regarding the inmate's conduct and rehabilitation, and the fact that his home environment is deemed suitable to support his reintegration, he may be placed on a seven-month Community Service Order to be served at the Kamaingon Assistant Chief's Office.

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 G.G 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 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 there 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 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.

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 315 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 7 months at Kamaingon Assistant Chief's Office.

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

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R. NYAKUNDI

JUDGE

