



**Makau alias Wambua v Republic (Criminal Petition E007 of 2024)
[2025] KEHC 10327 (KLR) (18 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10327 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL PETITION E007 OF 2024
RN NYAKUNDI, J
JULY 18, 2025**

BETWEEN

YUSUF MAKAU ALIAS WAMBUA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant/Petitioner herein was charged with the offence of breaking into a building with intent to commit a felony contrary to section 307 of the [Penal Code](#) at the trial Court. The particulars of the offence were that Yusuf Makau alias Wambua on the night of 24th and 25th July 2023 at Kahuho Estate at Burnt Forest Area in Ainabkoi Sub-County within Uasin Gishu County broke and entered a building namely sheep shed/pen house belonging to Dickson Ndungu Mwathi with intent to steal a sheep therein.
2. The Applicant/Petitioner herein was tried and in the judgment delivered on 8th November, 2023, the trial court found the Applicant guilty of the offence as charged. After considering the Applicant's mitigation, the court proceeded to sentence him to serve 5 years' imprisonment.
3. Being aggrieved with the sentence, the Applicant filed the petition dated 30th December 2024 which was based on the following grounds:
 - a. That I do not oppose the charges/sentence.
 - b. That I beg this Hon court to consider my application of reducing the sentence for it is too harsh.
 - c. That upon my arrest I was a bread winner to the entire family including my two daughters who are now taken care of by my mother and they need my support.



- d. That I am a remorseful person having taken some courses while in prison that include carpentry and theology.
- e. That prison life has taught me a lot on how to live in harmony with the society.

Decision

- 4. This court has carefully considered this application. When the trial court sentenced the Applicant to serve the custodial sentence, it was exercising judicial discretion. This court can only interfere with such exercise of discretion if it is established, either that the sentence was too harsh or too lenient in the circumstances. The court will also interfere with the imposition of the custodial sentence if it is established that the trial magistrate applied the wrong principles of the law in sentencing the Applicant or that the sentence was illegal.
- 5. In the present application, it was clear to the court that the sentences imposed upon the Applicant were legal. This court has also taken into account the nature of the offence that the Applicant was convicted of. It has also taken into account that the Applicant has been in prison for almost 2 years since the date of arrest being August 1st 2023. This court formed the view that the period the Applicant has been in prison is sufficient punishment. He has learnt his lesson. In the premises therefore, the custodial sentence imposed upon the Appellant in Eldoret Chief Magistrates Court Criminal Case No. E1662 of 2023 is hereby commuted to the period served. The Applicant is ordered set at liberty and released from prison forthwith unless otherwise lawfully held. It is so ordered.

DATED AND SIGNED AT ELDORET THIS 18TH DAY OF JULY 2025

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R. NYAKUNDI

JUDGE

