



REPUBLIC OF KENYA



**Wabomba v Republic (Criminal Revision E110 of 2025)
[2025] KEHC 10579 (KLR) (21 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10579 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E110 OF 2025
RN NYAKUNDI, J
JULY 21, 2025**

BETWEEN

BRIAN WABOMBA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Coram: Before Justice R. Nyakundi

M/s Sidi for the state

1. The applicant was charged of house breaking. The brief facts are on the 27th day of August 2024, at around 1430hrs at Berur estate in Moiben sub-county, within Uasin Gishu county, broke and entered the building used as dwelling house by Angela Kipkoech and stole household items as per the attached inventory all valued at Ksh. 30,750 the property of the said Angela Kipkoech.
2. He pleaded guilty to the offence convicted and sentenced to two (2) years imprisonment. He has now applied for his sentence to be reviewed and the remainder of the sentence of 6 months at the Chief's office Chepkanga

Decision.

1. 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.

1. 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.

2. This application is based on the social inquiry report dated 15th 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 Home and Personal Circumstances

Family Background

The inmate before court is the son of Pastor Thomas Wabomba and Salome Simiyu who reside in Chepkanga Uasin Gishu County on their leased land measuring approximately a quarter acre. His mother works as a casual laborer at Marura. He is the first-born in a family of five children, four of his siblings are still in school.

Personal History. He was born in 1999 in Bungoma County, upon attaining school going age, he was enrolled to Chesikaki primary school where he did his KCPE and scored 284 marks out of the possible 500. He proceeded to join Kaptenai boys' high school where he did his KCSE in the year 2021 obtaining a mean grade of C+. However, he was unable to proceed to university due to financial constraints and since then he has been working as a casual laborer in Eldoret. He is not married and has no He does not abuse any drug and he is a first time offender. There is no history of criminality in the family.

Prison Assesment Rehabilitation and Re-intergration Throughout his incarceration, the inmate has exhibited admirable dedication to reform and personal growth. He successfully obtained a certificate in theology from Beraen Prison ministries and Jesus is life ministry. He has actively engaged in farming and poultry and has grown to be fond of farming. He has acquired modern farming skill such as modern weed control and type of fertilizer to be apply for optimum harvest. He is looking forward to an early release so that he can go out there and actualize the acquired skill. The offender expresses deep regret for committing the crime and states that he has undergone personal transformation. He affirms that he has learnt to obey the law and is determined not to reoffend. Upon his release, he plans to return to his parents in Chepkanga, who have expressed their readiness to support his reintegration into the community. The prison authorities regard him highly and recommend his early release.



Offenders' attitude Towards Non-custodial Sentence:

The offender accepts the non-custodial sentence.

Conclusion

Your Lordship, the inmate before court is a 26 years old man who was sentence for a period of two years for the offence of house breaking and stealing. He has served two thirds of his sentence and undergone rehabilitation. The prison authorities regard the inmate highly. The inmate has been of great help in the prison farm. He has adhered to the orders and way of life of prison. He is willing to put into practice the modern farming skills he has acquired so far in prison. His family is ready to accept him back in the community and help him resettle.

Recommendation

Given that the prison authorities and his family expressed no objection for the inmate's early release, he can be considered to serve a Community Service Order (CSO) for the remaining period of his sentence (6 months) at the Chiefs office Chepkanga under the supervision of the chief. His main duties will be to plant trees and clear the compound and to maintain them until the end of his sentence.

4. 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.
5. 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).

6. 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).
7. 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.
8. 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.
9. In the instance case am hopeful that the review of custodial sentence and substitution of it with that of community service at Chief’s Office Chepkanga will contribute towards promoting the domain of non-custodial sentence. The sentencing recommended by probation officer is that of 6 months being the balance of the custodial sentence. Orders accordingly.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 21ST DAY OF JULY 2025

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R. NYAKUNDI

JUDGE

