



**Barasa v Republic (Criminal Revision E061 of 2023)
[2025] KEHC 12510 (KLR) (9 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12510 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E061 OF 2023
RN NYAKUNDI, J
SEPTEMBER 9, 2025**

BETWEEN

ALEX BARASA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Alex Barasa was charged with the offence of stealing stock contrary to Section 278 of the Penal Code.
2. The brief facts of the particulars are that on the night of 17/08 /2022 at Kipkenyo village Kapseret Sub-County within Uasin Gishu County jointly with another before Court one heifer valued at Kshs 20,000/= the property of Alice Muhonja.
3. The Applicant was convicted on his own plea of guilty and was sentenced to serve four (4) years imprisonment on 6th September 2022.
4. Having been aggrieved by the sentence, he has now moved this court to exercise discretion to review the sentence under Article 50 (2) (p) (q) of *the Constitution*.

Decision

5. The applicant has applied to this court for his sentence to be reviewed under Section 362 and 364 of the Criminal Procedure Code to have the remainder of the balance be served within the community so that he can be reintegrated back to the larger society. Although this is not an appeal, the following principles in the case of Benard Kimani Gacheru vs. Republic [2002] eKLR apply:

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial Court. Similarly, sentence must



depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already states is shown to exist.”

6. In considering this application, certain factors are responsive to have the applicant’s sentence reviewed and substituted with a non-custodial sentence. Such factors include:
 - a. Age of the applicant
 - b. Begin a first offender
 - c. Remorsefulness
 - d. Pleading guilty at the earliest opportunity and cooperation with the prosecution and the police.

7. In the present case, when one weighs aggravating and mitigating factors the trial court should have proceeded to take into account the above factors and of more significance the stolen cow was recovered and returned to the complainant. In essence it will be prudent for this court to rule that the applicant has been sufficiently punished for the offence and should be released to the Community-Based Village Culture and Customary Value School of Honesty so that he can avoid re-offending. He is free indeed unless otherwise lawfully held.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET THIS 9TH DAY OF SEPTEMBER 2025.

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R. NYAKUNDI
JUDGE

