



REPUBLIC OF KENYA



KENYA LAW
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**Makina v Republic (Criminal Revision E066 of 2025)
[2025] KEHC 12840 (KLR) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12840 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL REVISION E066 OF 2025
S MBUNGI, J
SEPTEMBER 18, 2025**

BETWEEN

DANIEL NYONGESA MAKINA APPLICANT

AND

REPUBLIC DEFENDANT

RULING

1. On the night of 12th January, 2025 at around 0030 hours at Mukanga area, Shikomari Sub Location, In Butso North Location in Navakholo Sub County within Kakamega County allegedly the Applicant and co-accused jointly broke and entered into the shop of James Lukhachi Afuma. They stole 9 mobile phones: Luxus X70, Huawei Y5 PRO, Neon Ultra, Villaon V20, VKGtel Yolo2, Villaon V20 SE, Lexus X60 Pro Max, Villaon U501W, Henix Button all Valued at Ksh.72,000/=
2. On the very day at 07008 hours at Maraba Market Makunga Sub location, Makunga in Mumias East Sub county within Kakamega county, otherwise than in the course of stealing, dishonestly retained 5 mobile phones; Lexus 70 Green in colour, Huawei Y5P Black in colour, JXA 16 Pro White in Color all values Kshs. 46,000/= knowing or having reasons to be stolen property of James Lukachi Afuma.
3. The Applicant was arrested with his co-accused and were charged with two counts the offense of:
 - a. Breaking into a building contrary to section 306 (a) of The Penal Code.
 - b. Stealing Contrary to Section 268 as read to section 275 of the Penal Code with Alternative charge of Handling Stolen Property Contrary to Section 322 (2) of the Penal Code.
4. The Applicant pleaded guilty and was convicted for the 2 counts and was sentenced to serve:
 - i. 5 years Imprisonment on Count I.
 - ii. 3 years' imprisonment on Count II.



- The Sentence was to commence from the date of arrest 12th. January,2025 and it was to run concurrently.
5. While the 2nd Accused was committed to community service for a period of 6 Months at Navakholo Sub county hospital for the two counts.
 6. The applicant herein filed a Notice of Motion dated on 27th. May.2025 seeking the following orders:
 - a. That the court be pleased to admit the application late.
 - b. That the record of application be certified as properly filed.
 - c. That the late application prays for mercy, probationary orders be determined on time.
 - d. That the honorable court adopts all that had been raised in this application.
 7. The Application was equally grounded by an Affidavit sworn the very date citing the following grounds: -
 - i. That he was a first offender serving a sentence of 5 years for the offence of breaking and stealing.
 - ii. That he was immediately transferred to Shikusa farm prison which interfered with him launching his application on time.
 - iii. That his health condition was not favorable during the time hampering the application process as required by law.
 - iv. That the applicant was not conversant to court processes since he was a first offender.
 - v. That he does pray for the determination for this application out of time so that the applicant can get a safer conclusion of the matter.
 - vi. That he humbly prays to the court to allow him to file this application so that it can be heard and determined as soon as possible.
 - vii. That he annexed copies of his birth certificate, primary school result slip, his father's ID copy, his form two report card and a letter from his area as proof of his age, conduct and that he goes to school.
 8. I have looked at the Application , the Application is poorly drafted , it is not clear whether the Applicant is seeking for a Revision of the Sentence, a Review of the sentence of he is Appealing against the sentence.
 9. Let the Applicant file a proper Appeal , if he is appealing against the sentence or proper Application for revision/review if he is seeking for such.
 10. The Application is therefore struck out for being incompetent.
 11. Right of Appeal 14 days.

DATED SIGNED, AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 18TH OF SEPTEMBER, 2025.

S.N. MBUNGI

JUDGE

In The Presence Of;



C/A: Elizabeth Angong'a

