



**Makau v Republic (Criminal Petition E004 of 2025)  
[2025] KEHC 13791 (KLR) (26 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13791 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKUENI  
CRIMINAL PETITION E004 OF 2025  
TM MATHEKA, J  
SEPTEMBER 26, 2025**

**BETWEEN**

**MICHEAL MAKAU ..... PETITIONER**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged with handling stolen property contrary to section 322(1) as read with 322(2) of the [Penal Code](#).

Particulars are that on the 8<sup>th</sup> day of March, 2024 at Makindu upper Market, Makindu Location in Makindu subcounty within Makueni County otherwise than in the course of stealing dishonestly retained three mobiles phone Make Itel A60, Itel A05s and Max 50 Pro, knowing or having a reason to believe them to be stolen or unlawfully obtained.

2. He pleaded guilty before Hon. L. Gitari R on 11/3/2024 and 12/3/2024 to the main count.
3. The court asked for Pre - Sentence Report though the court was told he was a repeat offender in Cr. 656/2023 where he had been placed on Probation Supervision for 3years.
4. When he was convicted in the matter under the instant application - Probation Aftercare Service applied to have the Probation Order in Cr. 656/2023 vacated.
5. Hon. L. Gitari RM in sentencing him stated -

The court has considered the offence by accused person and accused's mitigation for forgiveness. However from the PSR report the accused is a repeat offender who is currently serving a three year probation sentence in previous file number E656 of 2023 upon conviction on 14/7/2023. The Probation Officer has indicated of the difficulty in dealing with the accused probation sentence.



In the circumstance the court finds a deterrence sentence appropriate at this point for this offence. From the complainant's statement he is yet to recover his stolen goods which he has incurred huge financial loss.

6. The applicant filed this petition seeking *inter alia* ;
  1. Section 3 & 4 (b) of the [Probation of Offenders Act](#) Cap 64 be consistent with Article 25(a) 47(1) & 48 of the [CoK](#) 2010.
  2. The petitioner sentenced for imprisonment to benefit from the [Probation of Offenders Act](#), considering that the petitioner is a first offender remaining with less than 3 years to complete his sentence hence qualifies for a non-custodial sentence.
7. This is supported by his affidavit where he depones *inter alia*:-
  1. That, I am petitioner was convicted on 9/5/2024 and sentenced to serve 4 years and 5 months imprisonment.
  2. That, I am a first offender, remorseful and willing to live as a law abiding citizen and I request this Hon. Court to allow me a second chance to join the society.
  3. That, I pray this honourable court to allow me serve my sentence on non-custodial imprisonment in order to continue assisting my parents, family and in growth of the society at large.
8. The issue is whether the applications is tenable.
9. As a petitioner, the applicant has not set out the violations against his rights as per the Articles of the [Constitution](#) he has cited herein above. All the articles of the [Katiba](#) set out herein above are simply listed there but their citation is not explained in any way.
10. The applicant is not a first offender. He was on probation supervision in Cr. E656/2023 for 3 years with effect on 14/8/2023 at the time of his conviction in this matter Cr E 209/24 where he had been charged with stealing contrary to section 268 as read with section 275 of the [Penal Code](#).
11. Hence, although he does deserve a 2<sup>nd</sup> chance in this case he has not demonstrated honesty to warrant the discretion of this court.
12. In addition, the trial court noted that Probation After Care Service had difficulties in supervising him. So – it is surprising that the PACS officer in this revision recommends a probation order without any reference to the previous difficulties.
13. In addition the current report says, he was ordered to serve 2 years on probation supervision in the report filed on 4/6/2025 ref PS 3/3/Vol. 3/45 yet the Probation Aftercare Service officer Makindu in the letter of 12/3/2024 told the court that the accused had been placed on probation for 3 years. That order was vacated – so how would the applicant serve probation supervision as recommended by Ms Mwalewa when at the same time he has a revoked 3 year probation order hanging over his head? The applicant cannot be granted a non-custodial sentence while the revoked probation order hangs on his head and without any explanation whatsoever from the PACS Officer.
14. The application is therefore not tenable – and the same is declined

**DATED, SIGNED AND DELIVERED ON 26<sup>TH</sup> SEPTEMBER 2025**

**MUMBUA T MATHEKA**



**JUDGE**

Applicant

Chrispol CA

Mr. Kazungu for State

