



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Nyarenchi v Republic (Criminal Revision E189 of 2025)  
[2025] KEHC 13293 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13293 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CRIMINAL REVISION E189 OF 2025  
WM KAGENDO., J  
SEPTEMBER 25, 2025**

**BETWEEN**

**AMOS NYARENCHI ..... APPLICANT**

**AND**

**THE REPUBLIC ..... RESPONDENT**

*(Revision of sentence in Criminal Case No. E629 of 2025 at the Chief Magistrates Court Mombasa on 30th April, 2025 by Hon. G. Odera (RM))*

**RULING**

1. By way of an undated Notice of Motion brought under Sec 364 (1) (b) of the [Criminal Procedure Code](#) and Section 4 (2) of the [Probation of Offenders Act](#) for an order review of his three (3) year custodial sentence and the same be commuted to a non-custodial sentence served on probation.
2. The application is based on grounds that the applicant was arrested, charged, convicted and sentenced to three (3) years imprisonment in C.M.'s Court at Mombasa CR. case No E629 of 2025 for the offence of Stealing of Railway Materials contrary to Sec 279 (d) of the [Penal Code](#), and on Count II of Handling Stolen goods contrary to Sec 322 (2) of the [Penal Code](#).
3. That, he readily pleaded guilty to both counts, which were duly read to him at the commencement of trial, which is a crucial mitigation factor in criminal justice, which saves the court judicial time.

**Written submissions**

4. The applicant rehashed his position and relied on the authority in James Kazungu Luganje v Re. Petition No 128 of 2018 at Mombasa where this court reviewed a death sentence to a total of sixteen (16) years, five (5) of which were suspended to be served on probation.



## Analysis and Determination

5. I have considered the application, noting that the same is not opposed by the respondent, subject to the confirmation of the time spent in custody. Indeed, Article 50 (2) (p) (q) of the COK gives the Court the general power to review the decisions of the subordinate courts;

...

“(2)

- (q) if convicted, to appeal to, or apply for review by, a higher court as prescribed by law.”

6. Equally, this court’s revisionary jurisdiction is provided for under Section 362 of the Criminal Procedure Code.

“362. The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

7. Regarding the applicant, his Sentence Review report dated 4<sup>th</sup> June, 2025 was positive. The probation officer noted that the applicant was the sole breadwinner of his family of two (2) children. Further, that applicant was yet to be engaged in any meaningful rehabilitation besides counselling sessions and religious activities however there are no records of misconduct during his time spent in prison.
8. Similarly, the respondent/prosecution is of the opinion that the applicant has learnt his lesson noting that he pleaded guilty on the first instance, whilst cognizant of the economic struggles on his family as the sole breadwinner and thereby invited the court to exercise its discretion in view of attaining full rehabilitation and behavior change.
9. His family expressed their readiness to support his rehabilitation and reintegration into the community which has no resentment against him. It was thus recommended that a community service order supervised by the Mombasa County Probation Station, would be suitable.
10. In Kimutai v Republic [2024] KEHC 6871 (KLR) the court listed the considerations to appreciate when determining a custodial and non-custodial sentencing as follows:

In determining whether to impose a custodial or non-custodial sentence, the court is required to take into account the following factors: -

1. Gravity of the offence: - sentence of imprisonment should be avoided for misdemeanour.
2. Criminal history of the offender. Taking into account the seriousness of the offences, first offenders should be considered for non-custodial sentence.
3. Character of the offender: - non-custodial sentence are best suited for offenders who are already remorseful and receptive to rehabilitative measures.
4. Protection of the community: - where the offender is likely to pose a threat to the community.



5. Offender's responsibility to third parties: - where there are people depending on the offender.
11. Further, in the case of *Republic v Felix Madalitso Keke* Confirmation Appeal No 404 of 2010 (unreported) where the court held as follows:

“Considerations of the public interest when sentencing offenders must go beyond considerations of deterrence; there is always the consideration that the public whose interest the sentence wants to serve includes the prisoner before the court at first instance. It is in the public interest that sentences are passed which are not cruel, degrading and inhuman. Harsh or lenient sentences may not necessarily serve the public interest; they are likely to have an opposite effect. While sentences must fit the crime, the offender and the victim, they must also fit and cohere with overall sentencing goals, justice, reformation, restoration and rehabilitation. Our sentences may not be in the public interest if they only succeed in instilling crime and fail in bringing the prisoner a better person in society's continuum.”
12. In the instance the applicant was charged, convicted and sentenced with the offence of stealing of railway materials contrary to Section 279 (d) of the *Penal Code*, and under Count II of the offence of Handling Stolen goods contrary to Section 322 (2) of the *Penal Code*. The particulars are that on 29<sup>th</sup> April, 2025 at Port Reitz area in Jomvu sub-county within Mombasa County, jointly with others not before court stole: four (4) pieces of U-shaped metal bars, one (1) angle line metal bar, one (1) piece of heel block, and one (1) piece of modified spanner machine spare, all valued at kshs.100,000/- the property of Kenya Railways corporation, and otherwise than in the cause of stealing dishonestly received or retained them, knowing or having reason to believe them to be stolen goods.
13. Sec 279 (d) of the *Penal Code* states that:

If the theft is committed under any of the circumstances following, that is to say—

  - d. if the thing stolen is attached to or forms part of a railway; the offender is liable to imprisonment for fourteen years.
14. Sec 322 (2) of the Act provides that:
  2. A person who handles stolen goods is guilty of a felony and is liable to imprisonment with hard labour for a term not exceeding fourteen years.
15. From the onset the offense is not a misdemeanor. However, it is not lost to me that the applicant from the onset confessed and admitted their guilt, thereby pleading for mercy and forgiveness, which mitigations the trial court considered and, in its discretion, sentenced him to four (4) years in prison. In fact, as at the making of this decision, the applicant had served somewhat five (5) months of his four (4) year sentence.
16. In my view, the applicant's admission and confession of his faults, not only on arrest, trial but in the present application, demonstrates remorse and a realization of his wayward ways.
17. For what is worth, among the prime objectives of the criminal law is imposition of appropriate adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the way the crime is done. whereas there is no straight blanket formula for sentencing an accused person on proof of crime, the courts have adopted the twin objectives as deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstance of each case and the



court must keep in mind the gravity of the crime, motive for the crime nature of the offence and all other attendance circumstances.

18. In this instance, it is not lost to me that the factual realities herein of the severity of the offence. Having taken into account the circumstances of the case and the fact that the applicants have not served a considerable part of their sentence, I am of the considered opinion that a sentence combining both custodial and non-custodial sentence will achieve the objective of both deterrence and rehabilitation.
19. Having taken further into account the doctrine of proportionality in sentence and the fact that the applicant has a balance of three (3) years and seven (7) months in his custodial sentence, I have come to the logical conclusion that the sentences should be reviewed and served as follows:
  - a. Twelve (12) months imprisonment from the date of sentencing by the trial court, to act as deterrence and retribution.
  - b. Two (2) years thereafter on probation for rehabilitation and reintegration of the applicant into society to be supervised through the Mombasa Probation Offices.

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI VIRTUALLY THIS...25TH DAY  
OF...SEPTEMBER. 2025.**

**W.K. MICHENI JUDGE**

In the presence of;

For the applicant(s).....in person.....

For the Respondent...Mr Sirima.....

Court Assistant.....MS Sirima.....

Signed By/for:

Hon. Lady Justice Wendy Micheni

