



**Njihia v Republic (Criminal Revision E049 of 2025)
[2025] KEHC 14262 (KLR) (13 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14262 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CRIMINAL REVISION E049 OF 2025
LN MUTENDE, J
OCTOBER 13, 2025**

BETWEEN

SOLOMON NJIHIA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Solomon Njihia, the Applicant, broke into a building used as a dwelling house by Bibiana Wanjiru and stole therefrom six (6) chicken valued at Kshs.6,000/-. He pleaded guilty at the outset.
2. A social inquiry was conducted and a report thereof filed on 25th July, 2023 by the Probation Officer which indicated that he was aged 17 years and in Form three. Following the recommendation, he was placed on probation supervision for a period of two (2) years on 25th July, 2023.
3. Subsequently, the Applicant who was a probationer failed to keep to the terms of the order having committed another offence while under probation supervision. A production order was issued and upon being produced in court, the Applicant was sentenced to serve two (2) years imprisonment.
4. Through an undated Notice of Motion, he seeks to be allowed to serve the remainder duration as a non-custodial sentence.
5. In a supporting affidavit, he deposes that his parents are old and suffering since his incarceration. Expressing remorse, he urges that no prejudice will be suffered by the Respondent.
6. This court has been called upon to revise orders of the subordinate court. The powers in that respect emanate from Section 362 of the Criminal Procedure Code that provides thus;

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. The High court is seized of supervisory jurisdiction to review the decision of the subordinate court to ensure it is correct legal and proper, for the purpose of ensuring it is regular. And in so acting it may alter, reverse or even change the order granted.
8. Section 8 of the Probation Offenders Act provides thus;
 - (1) If, after hearing information on oath, it appears to a judge or magistrate that a probationer has failed to comply with any of the provisions of the probation order, he may issue a summons to the probationer requiring him to appear at the place and time specified therein or may issue a warrant for his arrest.
 - (2) A summons or warrant under this section shall direct the probationer to appear or to be brought before the court by which the probation order was made.
 - (3) If it is proved to the satisfaction of the court by which the probation order was made that the probationer has failed to comply with any of the provisions of the probation order, then—
 - (a) without prejudice to the continuance in force of the probation order, the court may, if no moneys are liable to forfeiture by the probationer under sub-section (4) of section 4, impose on the probationer a fine not exceeding twenty thousand shillings; or
 - (b)
 - (i) if the probationer was not convicted of the original offence in respect of which the probation order was made, the court may convict him and pass any sentence which it could pass if the probationer had just been convicted before that court of that offence; or
 - (ii) if the probationer was convicted of the original offence in respect of which the probation order was made, the court may pass any sentence which it could pass if the probationer had just been convicted before that court of that offence:

Provided that, where a court has, under paragraph (a), imposed a fine on the probationer, then, on any subsequent sentence being passed upon the probationer under section 7 or this section, the imposition of that fine shall be taken into account in fixing the amount of the sentence.
9. It is a principle of law that an appellate court can only interfere with the discretion of the trial court on sentencing if it applied a wrong principle by taking into account irrelevant factor or, if the sentence was harsh or excessive that it demonstrated an error of principle. (See *Wanjema v Republic* [1971] EA 493).
10. In response, the State through learned Prosecution Counsel, Ms. Sang submitted that the court may consider reducing the sentence as opposed to granting the Applicant a non-custodial sentence.
11. Section 7(4) (b) of the Probation Offenders Act provides thus;
 - (4) Where it is proved to the satisfaction of the court by which the probation order was made that the probationer has been convicted of an offence while the probation order was in force, then—
 - (b) if the probationer was convicted of the original offence in respect of which the probation order was made, the court may pass any sentence which it could pass if the probationer had just been convicted before that court of that offence.



12. The court exercised discretion by passing a sentence that would have been meted out at the outset.
13. Notably, prior to committing another offence the Applicant had served almost the entire duration. He was sentenced on 25th July, 2023 and was presented before court on 20th February, 2025. From the time he was committed to jail he has served a sentence of seven (7) months imprisonment.
14. When he first committed the offence, he was a minor (17 years) he needed counselling and rehabilitation so as to be reintegrated into the society. Being confined in prison for a long duration may make him a hardened criminal.
15. Accordingly, I quash the sentence imposed which I reduce to the term served. The Applicant will be released immediately unless otherwise lawfully held.
16. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 13TH DAY OF OCTOBER, 2025.

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L.N. MUTENDE

JUDGE

