



REPUBLIC OF KENYA



KENYA LAW
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**Kigenyu v Republic (Criminal Revision E041 of 2025)
[2025] KEHC 16446 (KLR) (14 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16446 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CRIMINAL REVISION E041 OF 2025
MA ODERO, J
NOVEMBER 14, 2025**

BETWEEN

STANLEY NGOTHO KIGENYU APPLICANT

AND

REPUBLIC PROSECUTOR

RULING

1. The Applicant herein Stanley Ngotho Kigenyu has filed an application dated 17th January 2025 seeking that the sentence imposed upon him by the Lower Court be reviewed and that he may be placed on Probation.
2. The ODPP represented by Ms. Sukara opposed the application.
3. The Applicant had been charged in the Magistrates Court in Nyeri Vide CMCC No. E1720 of 2023 with two offences.
4. The first charge was that of Burglary Contrary To Section 204 (2) Of The Penal Code. The particulars were that

“On the night of the day of the December 2023 at around 0200 hrs in Huhoini village, Tetu Sub-County within Nyeri County, you broke and entered the dwelling house of JANE WAMBUI KIBOI with intent to steal.”



5. The applicant faced a second count of Assault Causing Actual Bodily Harm Contrary To Section 251 Of The Penal Code. The particulars of the charge were that

“On the day of 11th December 2023 at around 0200 hrs in Huhoini village in Tetu Sub-County within Nyeri County, you unlawfully assaulted Jane Wambui Kiboi thereby occasioning her bodily harm.”

6. The applicant pleaded ‘Not Guilty’ to both charges. The trial was fully heard and on 13th December 2024, Hon. C. K. OBARA, Senior Principal Magistrate, delivered a judgment in which she convicted the applicant of Burglary and Assault.
7. Following his conviction the applicant was accorded an opportunity to mitigate. The court then imposed for Count No. 1 a fine of Kshs. 50,000 in default one (1) year imprisonment. On Count No. 2 the Applicant was fined Kshs. 20,000 in default to serve one (1) year imprisonment. The sentences were to run consecutively.
8. The court is empowered by Article 165 (6) of *akn ke act 2010 constitution the Constitution of Kenya 2010* to review a decision by a subordinate court. Article 165 (6) provides:-

“The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function but not over a superior court.”

9. Section 333(2) of the Penal Code Cap 63 Laws of Kenya provides as follows:-

“Subject to the provisions of Section 38 of the Penal Code, every sentence shall be deemed to commence from and to include the whole of the day of the date on which it was pronounced, except where otherwise provided in this code. Provided that where the person sentenced under sub-section (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.” [Own emphasis]

It is clear from the above proviso that the law requires court to take into account the period the convict spent in custody.

10. I have carefully perused the record of the proceedings in the lower court I am satisfied that the applicant was accorded a fair trial as constitutionally guaranteed. Indeed the applicant has not claimed that he was denied any of his trial rights.
11. I further note that the learned trial magistrate conducted a sentencing hearing. The applicant was granted an opportunity to mitigate. In sentencing the magistrate took into account the applicant’s mitigation and also took into account the fact that the applicant had been in remand custody for one (1) year during his trial.
12. The sentences which were imposed upon the applicant were lawful and I do not find the same to have been excessive.
13. The applicant has prayed that his sentences be set aside and that he be placed on probation. This court did order that a Social Enquiry report be filed. The report was filed on 10th November 2025. The report indicated that the applicant’s parents were not ready to receive him back home and that community members remain hostile. In short the applicant was not found to be a suitable candidate for probation.



13. Finally I note that although the trial court did make the observation that the applicant had spent one (1) year in remand the court did not give a clear indication of when the sentence would take effect.
15. The record indicates that the applicant was arrested on 20th December 2023 and he was convicted on 13th December 2024 . For avoidance of doubt the sentences imposed by the trial court are confirmed and upheld. The sentences which are to be served consecutively will run from the date when the applicant was arrested being 20th December 2023 . It is so ordered.

DATED IN NYERI THIS 14TH DAY OF NOVEMBER 2025

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MAUREEN A. ODERO

JUDGE

