

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MURANG'A
HIGH COURT CRIMINAL REVISION NO. E042 OF 2025

DANSON MBUGUA MUIRURI.....
APPLICANT

VERSUS

REPUBLIC.....
T **RESPONDEN**

RULING

1. The Applicant was tried and convicted of the offence of stealing contrary to the provisions of **Section 268 as read with 275 of the Penal Code**. The particulars were that on the 28th October 2024 in Kairi Village, Githembe Sub-location, Kigumo Sub County within area of Murang'a County he stole one metal base valued at Kshs. 20,000. The Applicant was tried, convicted and sentenced to 3 years imprisonment on 1st April 2025.
2. The Applicant made a Notice of Motion Application to this Court date 7th April 2025 for the review of his sentence. The Application anchored in **362** and **364** of the **Criminal Procedure Code** and **Section 3(2)** of the **Community Service Order Act**, seeking the following Orders:

“That the Honourable Court be pleased to review the sentence meted upon him and consider the applicant for a non-custodial sentence for the remainder of the sentence.”
3. Vide oral submissions to this court on 27th October 2025 P. Mwangi for the ODPP concedes to the application indicating

that the sentence of three years was excessive considering that there was no option of a fine. Counsel also noted that the Court embarked on sentencing without calling for a pre-sentence report. Counsel is of the view that an option of a fine would be appropriate considering that the Applicant is a first offender.

4. The Court notes that the item stolen was of considerable value to wit kshs.20,000. The sentence for the offence of stealing as provided under **section 275 of the Penal code** is:

“... and is liable, unless owing to the circumstances of the theft or the nature of the thing stolen, some other punishment is provided, to imprisonment for three years.”

5. I therefore find that the sentence meted by the trial court was proper. As to the availability of the option of a fine, the **Penal Code** provides under **section 28** a framework for converting fines to sentence in default of payment. However, in the instant case, the penalty section 275 thereof does not give an option of a fine. It states:

“Any person who steals anything capable of being stolen is guilty of a felony termed theft and is liable, unless owing to the circumstances of the theft, or the nature of the thing stolen some other punishment is provided, to imprisonment for three years.”

6. Based on the foregoing, I find that the option of a fine is not available to the applicant. However, that the applicant is fairly of tender age to wit, 24 years together with other intervening circumstances the Court is inclined to give the Applicant a second chance thus and an opportunity for rehabilitation. I hereby make the following orders:

The application for review is granted. The Applicant will serve the remaining years of the sentence under probation subject to Probation Office Murang'a availing a report as to the area and supervision of the Applicant. The probation term should take effect on the date of submission and not later than 20th November 2025.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 13TH DAY OF NOVEMBER, 2025.

**HON. T. W. Ouya
JUDGE**

**For Applicant.....Applicant (Danson Mbugua Muiruri)
Present in person.**

**For Respondent.....Mwangi P for state
COURT ASSISTANT.....Brian**