

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CRIMINAL REVISION NO. E332 OF 2025

CORNELIUS CHERUIYOT
APPLICANT

VERSUS

REPUBLIC.....
.....RESPONDENT

Coram: Before Justice R. Nyakundi
M/s Sidi for the State

RULING

1. The Applicant was charged with burglary contrary to Section 304(2) and stealing contrary to Section 279(b) of the Penal Code. The brief facts of the particulars are that on the night of 3rd and 4th of June 2025 at unknown time Pipeline Estate at Burnt Forest in Ainabkoi Sub-County within Uasin Gishu County, with others not before Court broke and entered the kitchen building of Naomi Chepkoech Chumo and stole therein 4 pcs of Aluminum Sufurias, 8kgs of ordinary flour inside a 50kgs grey sack, 1 pc Biryani chondo, 1 pc of blue 2 litres thermos flask, 1 pc grey soft khaki trouser, 1 pc of black jeans trouser all valued at Ksh 7100/= the property of Naomi Chepkoech Chumo.
2. On alternative Charge for Count III the Applicant was charged with handling stolen property contrary to Section 332(1) of the Penal Code. The facts are that on the night of 16th and 17th day of March 2025 at Pipeline Estate area at Burnt Forest in Ainabkoi Sub-County within Uasin Gishu County otherwise than in the cause of stealing dishonestly retained 1 pc of D-light lamp, 1 pc of green khaki trouser, 1 pc jogoo jembe knowing or have reason to believe them to be stolen property.

3. The Applicant pleaded guilty, was convicted and sentenced to serve 1 year imprisonment on 2 July 2025.
4. As a consequence of that the Probation Officer filed a presentence review report which had the following components:

D. CURRENT HOME AND PERSONAL CIRCUMSTANCES

The inmate is the son of the late William Kipkorir and Hannah Chemtai Kipkorir of Kapkenda location in Uasin Gishu County. Both his parents are peasant farmers. The inmate is the 7th born in a family of eleven siblings. His elder siblings live independent while his younger siblings are school going and dependent on their parent's siblings are relatively young and most of them depend on their parents. The home environment is of a low socio-economic standing but relatively stable. Prior to his arrest, he was living in Burnt Forest doing casual works. He dropped out of school at standard eight citing difficulties learning.

E. PRISON ASSESSMENT, REHABILITATION AND RE-INTEGRATION:

The inmate has acquired gardening skill during his stay at the prison which he can utilize to earn income. He has also participated in rehabilitation programs of counseling and as per the prison authorities; he has maintained a positive attitude. He also has skills in painting and he will utilize the same to earn a living positively.

F. INMATE'S ATTITUDE TOWARDS NON-CUSTODIAL MEASURES

The inmate pleads with this honorable court to be granted a non-custodial sentence for the remaining period of his sentence. He is open and willing to serve a non-custodial sentence for the remaining period of his sentence.

G. RECOMMENDATIONS

Your Lordship, the inmate is aged 32 years who is serving 1 year sentence for the offence of burglary. His actions were driven by a combination of hunger and frustrations stemming from lack of stable source of income, thus stole sufuria, flask and clothes. While this in no way justifies his actions, it provides a context for his emotional state at the time of the incident.

The inmate made a regrettable choice in expressing his frustration, resulting in possession of the stated items without permission. However, since his incarceration, he has shown remorse for his actions and has sought opportunities for personal growth and self-improvement. He acknowledges the inappropriateness of his responses and has expressed a sincere commitment to learning from this experience.

His parents have voiced his support for him and are willing to assist him continue with his rehabilitation if considered for an early release. He has a family that depends on him and he is eager to return and resume his life.

Your Lordship, considering the above facts and findings, I believe that he is no longer a danger to society and it is my assessment that the inmate is suitable candidate for early release. We therefore recommend that, he be placed on community service for three (3) months at Burnt Forest Primary School, supervised by the Head Teacher This recommendation is made subject to the discretion of this Honorable Court.

Decision

5. This application has been considered under Art 50(2)(p)(q), 6(a)(b) as read with Section 362 & 364 of the Criminal Procedure Code.
6. The guiding principles on review of sentence post-conviction is well articulated by the Court of Appeal in **Bernard Gacheru v Republic [2002] eKLR** the Court held that:

“It is now settled law, following several authorities by this Court and by the high Court, that sentence is a matter that rests in the discretion of the trial Court. Similarly, sentence must depend on the facts of each

case. On appeal, the appellate Court will not easily interfere with sentence unless, the sentence is manifestly excessive in the circumstances of the case, or that the trial Court overlooked some material factor, or took into account some wrong material, or acted on a wrong principle. Even if, the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial Court on sentence unless, anyone of the matters already states is shown to exist.”

7. This was also the position taken by the Court in **S vs. Malgas 2001 (1) SACR 469 (SCA)** held that:

"A Court exercising appellate jurisdiction cannot, in the absence of material misdirection by the trial Court, approach the question of sentence as if it were the trial Court and then substitute the sentence arrived at by it simply because it prefers it. To do so would be to usurp the sentencing discretion of the trial Court...However, even in the absence of material misdirection, an appellate Court may yet be justified in interfering with the sentence imposed by the trial Court. It may do so when the disparity between the sentence of the trial Court and the sentence which the appellate Court would have imposed had it been the trial Court is so marked that it can properly be described as "shocking", "startling" or "disturbingly inappropriate"

8. The doctrine of proportionality in sentencing is one of the fundamental aspect which actually must define the trial Courts discretion in imposing a fair and appropriate sentence. The Court in **Tarry v Pryce (1987) 24 A Crim R 394, 402** had this to say:

Although the discretionary aspect of sentencing is of great importance, there is to my mind no doubt that there is scope for a more scientific approach. A lack of consistency between sentencers dealing with run-of-the-mill cases cannot be supported by reliance on the discretionary power to sentence. The need for consistency in the

punishment in like cases of like persons overrides the right of the sentencers to impose his idiosyncratic view.

9. Given the above principles the applicant Cornelius Cheruiyot has been found to be a fit applicant to have his sentence reviewed and substituted with non-custodial sentence of three months to be served at Burnt Forest Primary School. With this order the Applicant shall be removed from Prison custody and placed on C.S.O for the remainder of his period. This will also enable him to be rehabilitated within the community in which he was brought up and cared for before targeting the categories of those forming an intention to commit crimes. It is so ordered.

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 25TH DAY OF
NOVEMBER, 2025**

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**R. NYAKUNDI
JUDGE**