

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ELDORET**  
**CRIMINAL REVISION NO. E383 OF 2025**

**JACOB KIPRONO ..... APPLICANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

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

**RULING**

1. The Applicant was charged with stealing stock contrary to Section 278 of the Penal Code. The brief facts of the particulars are that on the 15<sup>th</sup> day of July 2025 at Amgwen village in Soy subcounty within Uasin gishu County stole one freshian cow valued at Ksh 70,000/= the property of Tecla Jepchumba.
2. The Applicant was convicted on own plea of guilty and was sentenced to serve 4 years' imprisonment on 16 July 2025.
3. As a consequence of that the Probation Officer filed a report dated 21/11/2025 stating as follows;

***Sources of information***

*Other than the information extracted from the court and the police files, this report is informed by an interview with the inmate, his father Cleophas Koech,, his mother Prisca Koech, his neighbor Noah Kiplagat, his other neighbor Kibe Wanga, his village elder Julius Arusei, his chief Daniel Busienei and the prison authorities.*

***Particulars of the offence***

*On the 15<sup>th</sup> day of July 2025 at Emgwen village in Soy Sub County within Uasin Gishu stole one Freshian cow valued at Kshs 70,000/= the property of Tecla Jepchumba.*

***Introduction***

*This is a sentence review report called for by the Eldoret High Court in respect of the aforementioned having been charged with the offence of Stealing c/s 268. The report appraises the current home situation and personal circumstances including family background, suitability of the inmate being released, personal background and circumstances including family relationships and*

health status. The report also highlights the convict's attitude towards the offence and his willingness towards a noncustodial sentence. It ends with the conclusion.

## **Current home and personal circumstances**

### **Family background**

The inmate was born in Sinendet in Soy to Mr Cleophas Koech who is a small scale farmer and runs a posho mill. His mother Mrs Prisca Koech sells groceries within the village. He is the second born in a family of five children. His first born brother is a class eight graduate and a trained mechanic and driver, is engaged in boda boda riding within Eldoret town. His other followers are in form four, in grade 6 and in grade three in Sinendet secondary and primary respectively. His father owns 1.4 acres of land where he inherited the 4 points and bought one acre. From the 1.4 acres, the convict and his elder brother have been allocated 2 points each while the rest is used for housing for the family and for food production. Concerning criminal record in the family, his elder brother was once arrested for threatening to kill in 2016, where the case was withdrawn after six months of his stay in the remand.

### **Personal Background**

The inmate attended Sinendet primary and dropped out at will in STD Seven, discouraged by his poor performance. He then left for his aunt's place in Nandi after he realized he was idle at home to try and get some meaningful engagement. He came back home after two months and requested a neighbor for a motorcycle riding job which he was given for Ksh 300 bob pay per day, until when the neighbor sold out his motorbike. His quest to get a motorcycle even on loan through the support of his parents the way his elder brother was supported never came through, a fact that disappointed him and drove him to feel neglected by the family. He fought being idle for long but was getting some menial engagements from his neighbors. With time, he got into bad peer

*influence, started drinking alcohol and found himself in the criminal act of stealing. In his circumstances, he intended to sell the said cattle to get some capital to procure a motorcycle on loan so that he gets a steady engagement through motorcycle riding just as his brother.*

### **Previous Convictions**

*The inmate has no any previous records. He was however once involved in almost similar circumstances where he took his uncles cattle to sale for the same purpose of procuring a motorcycle before. The matter was then registered in court but later withdrawn and settled at home after the cattle was recovered.*

### **Family Relationships**

*His parents state that they have a good relationship with the convict. He has been visited once by his brother Kevin and he is in constant communication with the parents through the welfare. His good relationship with his extended family saw him earn forgiveness from his uncle, same as in this current situation where her aunt who is the complainant in the matter, is empathizing with his stay in custody and wishes that he gets empathy from the honorable court as well, so that he can join the family at home.*

### **Suitability of his release**

*His parents, neighbors and even the complainant who is a member of the convict's extended family, are all praying for his release and are ready to receive him at home. They express their readiness to receive and resettle him within the home. His neighbors interviewed are also in support of his release and expressed that despite his noted life stressors, he is someone who can be talked to, to change his ways.*

### **Prison assessment, rehabilitation and re-integration**

#### **Inmate's views**

*The inmate admits he kept wrong peers for some time where he picked up behaviors that are socially unacceptable, which landed*

him in a crime that he has dearly paid for. He expresses that he has learnt his lessons and despite him not having a steady engagement, he will spend his free time in environment and company where he will be advised properly. That he will also change his thinking patterns so that he is able to come up with solutions that are not law breaking whenever he faces any challenges. He is praying for a consideration for a chance to change his ways while in the community. He also commits to be ready to listen to any guidance from his parents and all the authorities around him.

### **Prison Officer's views**

The prison authorities were not opposed for a chance for the release of the convict but affirmed that at his youthful age, he still needs a lot of guidance as he still has potential to change for the better.

### **Family views**

His parents are convinced that he has had enough discipline and that they will continue talking to him the way they used to upon his release.

### **Local administration views**

His area chiefs opinion of him is that he is just a vulnerable youth in need of guidance and support which might have not been done adequately before his arrest. He opines that he can still undergo the same at the community while serving under community based rehabilitation programmes. His village elder on the other hand feels that the convict has displayed an unbecoming trend of criminal behavior, that he is not convinced that the five months he has been incarcerated, has taught him enough that can help him change in any way. He feels that the convict should be left to stay in custody for some time before his reintegration.

### **Inmate's attitude towards non-custodial measures**

The inmate is open to serve a non-custodial sentence and commits to adhere to completion.

### **Conclusion**

Your honor before court is a youthful convict aged 23. He is the second born in a family of five siblings and was living single within

*the home until when he was arrested. He comes from a cohesive family of fairly stable means but despite that, he dropped out of school at will hoping that he will engage in meaningful activities as he was performing dismally in school. He would later join wayward peers to seek for embrace as he felt neglected by his parents who never supported his quest to be supported to get a motorcycle on loan, just as his elder brother so that he can engage himself in the motorcycle riding business.*

*Despite his undoing, his parents, neighbors and the complainant who is a distant relative, are praying for his sentence to be varied to community based rehabilitation. They strongly and jointly commit to continue talking to him. They acknowledge the discipline he has gotten while in incarceration and hope that he has learnt a lesson which will drive him to change for the better. They offer to be his support system in his rehabilitation moving forward and also to reign on him to adhere to the orders of a noncustodial sanction if he is considered. They informed that they have already made peace with the complainant who forgave the convict.*

*The offender admits his offence. He gives account of his undoing with measures he has put up to change his ways. He commits to use the good lessons he has learnt while in prison to resolve challenges better and also to seek for the right guidance. He is ready to perform Community service to pay back for his offence.*

*In view of the aforementioned your honor, the inquiry proposes an intensive and friendly rehabilitation measure coupled by the indulgence of his parents, neighbors and his area chief who have offered to be his support system. Being that he has never had a chance on a non-custodial sanction, the inquiry proposes for him to be given a chance on community service, where a blend on interventions may be tried on him to reform for the better.*

**Recommendation**

*In respect to the decision of your Lordship, I recommend a variation of his sentence to a Community Service Order to be performed at Kipsombe Location Chief's office.*

## **Decision**

4. This application is based on the provisions of the Criminal Procedure Code namely Section 357, 362, 364 as read with 382. The constitution also provides under Art 50 (2) (p) (q) as follows:

*(p) to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishments for the offence has been changed between the time that the offence was committed and the time of sentencing; and*

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

*(3) if this Article requires information to be given to a person, the information shall be given in language that the person understands.*

5. The same constitution in Art 50 (6) (a) (b) expressly states as follows:

*A person who is convicted of a criminal offence may petition the High Court for a new trial if-*

*(a) The person's appeal, if any, has been dismissed by the highest court to which the person is entitled to appeal, or the person did not appeal within the time allowed for appeal; and*

*(b) new and compelling evidence has become available.*

4. This application is based on the sentence review report dated 21<sup>st</sup> November 2025 as summarized above. I take note that the role of non-custodial sentence should underpin our penal system in which custodial sentence remains a recourse of last resort in punishing offenders. The sentence policy guidelines of the judiciary 2023 provides a framework in which Judicial discretion should be exercised to arrive at a fair and proportionate sentence on individualized circumstances. The objectives and principles of sentencing are well articulated and defined as follows:

*(a) **Retribution:** to punish the offender for his/her criminal conduct in a just manner.*

- (b) **Deterrence:** to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
- (c) **Rehabilitation:** to enable the offender reform from his/her criminal disposition and become a law-abiding person.
- (d) **Restorative justice:** to address the needs arising from the criminal conduct such as loss and damages.
- (e) **Community protection:** to protect the community by incapacitating the offender.
- (f) **Denunciation:** to communicate the community's condemnation of the criminal conduct.
- (g) **Reconciliation:** To mend the relationship between the offender, the victim and the community.
- (h) **Reintegration:** To facilitate the re-entry of the offender into the society.

5. In a documented research by Chrispinus Adenya Aben entitled Factors Influencing Success of Non-Custodial Sentence in Kenya: A Case of Kilifi District in Kilifi County 2011. He made the following observations: *First and foremost prison population around the world is increasingly placing enormous financial burdens on governments. There is growing recognition that imprisonment does not achieve some of its most important stated objectives, as well as being harmful to offenders, families and in the long term to the community (UNODC, 2006).*
6. It came out clearly from his research; *Supervision is an essential component of community based correction with the primary objective of enforcing compliance with the conditions of release to minimize risk to the public and to re-integrate the offender into the law abiding lifestyle. Lax supervision and failure to deal firmly with those who persistently violate the terms of release can bring an entire system into disrepute in criminal justice. (Killinger GG and Cromwell P.F, 1990). "The law is without doubt a remedy for great evils, yet it brings with it evils of its own". (Subbrano V.C.G. 1993). There are three primary gateways in the criminal justice. The first is at the police at the initial*

*stage of apprehension, the second is at the court after the determination of guilt and passing of a sentence and the third is the gateway to the community at the conclusion of the sentence (Johnson R, 2003).*

7. *Rule 8.2 of the Tokyo rules on non-custodial affirm that courts or sentencing authorities may dispose off cases in any of the following ways-verbal sanctions, admonitions, reprimands and warning, conditional discharge, status penalty, economic sanctions and monetary restitution, restitution to the victim or compensation order, confiscation or expropriation, suspended or deferred sentence, probation and judicial supervision, community service order, house arrest and any other non-institutional treatment. Supervision is critical in realization of sentencing objectives. This is operationalized as poor and lax supervision leads to reconviction and abscondism. The quality and number of contacts between the offender are key in reforming, re-integrating the offender. The caseload per officer and the frequency of contacts between the officer and the probationer determines the level of intensity of supervision based on the risk category of the probationer. The community plays key role in having offenders change. Community attitude, home environment is deterministic of offender's potential to change.*
8. Time has come to re-conceptualize the effectiveness of custodial sentencing to promote a clear, fair, uniform and consistent approach by all levels of courts. A theme of any review of sentence must not lose sight of the objectives and sentencing. Am of the considered view that an effective sentence must also serve to communicate to society that justice has been done and the wrong doer punished and denounced for his or her conduct. Generally speaking, over time I have been involved in the practice of law as a trier of criminal cases they are no probative evidence that the harsher, punitive or severe the sentence does provide greater marginal deterrent effects.
9. In the instance case, I am hopeful that the review of custodial sentence and substitution of it with that of community service to be performed at Kipsombe Location Chief's office will contribute towards promoting the domain of non-custodial sentence. The sentencing recommended

by probation officer/community service officer is a variation of the Applicant's sentence to a Community Service Order from the four (4) years' custodial sentence imposed. Orders accordingly.

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 26<sup>TH</sup> DAY  
OF NOVEMBER, 2025**

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**R. NYAKUNDI  
JUDGE**