



REPUBLIC OF KENYA



KENYA LAW
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**Kiplagat v Republic (Criminal Revision E380 of 2025)
[2025] KEHC 17334 (KLR) (26 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17334 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E380 OF 2025
RN NYAKUNDI, J
NOVEMBER 26, 2025**

BETWEEN

TITUS KIPLAGAT APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged stealing contrary to Section 268 as read with Section 275 of the Penal Code. The brief particulars are that on the 31st day of January 2025 at around 0300hrs at Simotwo village in Moiben Sub County within Uasin Gishu County jointly stole 160kgs of shelled maize valued at Ksh 6050/= the property of Francis Kandie Komen.
2. The Applicant was convicted on own plea of guilty and was sentenced to serve 3 years imprisonment on 17 July 2025.
3. As a consequence of that the Probation Officer filed a report dated 18/11/2025 stating as follows;

Introduction and sources of information

This is a sentence review report in respect of Titus Kiplagat who is serving a three-year imprisonment for the offence of Stealing contrary to section 268 as read with section 275 of the penal code. In preparing the report, we read Court file, Police file, Prison authorities, Inmates area chief and Interview of inmate in prison, Inmate's family members (Celestine Cheruto and Everline) and the Victim

Current family and personal history

Family Background.

The inmate is the first-born of two children of the late Paul Boit and Gladys Boit, whose whereabouts remain unknown after she abandoned the family. He was raised by his elderly paternal grandmother, together with his younger brother, Bruce Kiprono, who currently works as a casual labourer in



Moiben. The family depends on small-scale farming for their livelihood. This inquiry established that the inmate experienced inadequate parental care during his upbringing, a factor that may have contributed to his involvement in crime. His brother, Bruce Kiprono, has indicated that he is willing to receive him and support his reintegration.

Personal history.

The inmate was born in 2006 in Chepngeno Chebor Village, Moiben Location. He attended Chepngeno Chebor Primary School up to Class Seven but dropped out due to financial constraints. After leaving school, he assisted his grandmother with peasant farming and domestic chores. He is single, has no parental responsibilities, and resides in a one-room semi-permanent house within his grandmother's homestead. He is in good health and reports that he does not consume alcohol. This inquiry established that the inmate has no formal education beyond primary level and lacks professional or vocational skills, relying solely on casual labour for his livelihood.

Prison assessment rehabilitation and re-integration

During his incarceration, the inmate has demonstrated commendable efforts towards rehabilitation. He was attached to the prison flower farm, where he acquired basic farming skills, which he believes will assist him during his reintegration. The inmate expresses sincere remorse for his actions and affirms that he has undergone significant personal transformation. Prison authorities hold him in high regard and support his early release.

Offenders' attitude towards non-custodial sentence:

The inmate admits to having committed the offence and states that his time in custody has taught him a valuable lesson. He affirms that he has learnt from his mistakes and pledges not to reoffend. He is appealing for a non-custodial sentence to enable him to reunite with his family and lead a law-abiding life.

Conclusion

Your Lordship, the inmate is 24 years old and a permanent resident of Kabiyet Village, Moiben Location. He is seeking a non-custodial sentence to enable him to reunite with his family and pledges not to reoffend. The prison authorities hold the inmate in high regard. He was attached to the prison kitchen, where he acquired basic catering skills that will assist him during his rehabilitation. The complainant does not oppose his request for community-based rehabilitation and hopes that he has learnt his lesson during his time in custody. Furthermore, the local administration and his family members have expressed their willingness to support his reintegration and rehabilitation.

Recommendation

Your Lordship, given that the inmate's home environment is conducive to his rehabilitation, and that local administrators are willing to be involved in the process, it is recommended that he be placed on a 15-month Community Service Order at Moiben Police Station under the supervision of the OCS.

Decision

4. 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.



5. 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.”

6. 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”

7. 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.

8. Given the above principles the applicant has been found to be a fit applicant to have his sentence reviewed and substituted with non-custodial sentence of 15 months to be served at Moiben Police Station under the supervision of the OCS. With this order the Applicant shall be removed from Prison custody and placed of C.S.O for the remainder of his period. It is so ordered.

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

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R. NYAKUNDI

JUDGE

