



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kinzi v Republic (Criminal Revision E376 of 2025)  
[2025] KEHC 17292 (KLR) (26 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17292 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E376 OF 2025  
RN NYAKUNDI, J  
NOVEMBER 26, 2025**

**BETWEEN**

**PATRICK KHAEMBA KINZI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**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 particulars are that on the 13<sup>th</sup> day of July 2025 at Saramek village in Soy Sub-County within Uasin Gishu County broke and entered into the dwelling house of Ednah Koskei with intent to steal therein and did steal from therein one music mixer make Yamaha valued at Kshs 36000/= the property of Saramek ACK Church.
2. The Applicant pleaded guilty and was convicted and sentenced to serve 1-year imprisonment on 15 July 2025.
3. As a consequence of that the Probation Officer filed a Sentence Revire Report dated 20<sup>th</sup> November 2025 which had the following components:

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 wife Nancy Karegera, his son Delvin Mishinganya, his sister Sharon, his neighbor Gladys, the prison authorities and his village elder Martin Odunga

Particulars of the offence

On the 13<sup>th</sup> day of July at Seramek village in Soy Sub County within Uasin Gishu County, broke and entered into the dwelling house of Edna Koskei with intent to steal therein and did steal from there one music mixer make Yamaha valued at Ksh 36,000/= the property of Seramek ACK church.



## 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 Burglary. The report appraises the current home 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 non-custodial sentence. It ends with the conclusion

## Current home and personal circumstances

### Family background

The inmate was born in Vihiga in Kapsoi, Seremi area. Both his parents are now deceased. He is the first born among six children. One of them is deceased. His brother Wesley works with the prison department and was recently transferred from Kahawa to a station near home, Allan is an Electrician in Nairobi, Sharon is a wildlife officer and Newton is just at home in Vihiga. His late parents lived and were buried within their one and a half inherited ancestral land in Vihiga, currently occupied by the inmate's last born brother. His late father bought some 4 acres of land in Transzoia County, which was occupied by the convict where he is to share with his three other brothers who have not yet settled within the land.

### Personal Background

The inmate attended Kapsoi primary and later proceeded to Nyang'ori boys where he scored a D plus. He did not proceed with education but relocated to Transzoia where his father had bought him and his brothers' 4 acres of land with intentions of settling them there. In 1996, he moved to Nairobi where he got engaged in masonry jobs. He came back to Vihiga after two years where he married Nancy and proceeded with her to Transzoia in 1998. In 2004, he moved with Nancy to Nairobi where Nancy has been to date, renting in Kabiria in Dagoreti South while working as a domestic worker but visits the home with the children once a year, in December.

The convict is blessed with two sons and one grandchild. All his sons went to school in Nairobi where his firstborn is currently a technician in electrical while his other son is engaged in his business. The grandchild lives with the convict's wife in Nairobi. The convict left Nairobi in 2010 to come and take care of the home in Transzoia. He used to engage in farming within the home and also in casuals and menial jobs before, which he now was not actively in due to his advanced age. He is in good health condition and has no any ill health reported

### Previous Convictions

The inmate has no any previous records; this is his first conviction.

### Family Relationships

No one in his immediate and extended family has ever visited him while in prison though he communicates with his sons, wife and siblings regularly through the welfare. His wife and sons were planning to visit him in December which is the only time they are allowed to take leave due to the nature of their work in Nairobi. His sister Sharon who stays in Kakamega expresses that his siblings are also in communication with him though they have not visited him due to tight work schedules and the distances involved. They all welcome the idea of his release to serve a non-custodial sanction which they will coordinate to ensure he serves well to completion, despite their distances from each other.

### Suitability of his release



His family, siblings, neighbor and the village elder, vouched for his release. His neighbors appraised him for being in good terms in the neighborhood where he has never offended. His wife and son prayed for his release. They informed that his incarceration has entirely affected the family's stability. At an individual level, it has affected them in a big way psychologically and also materially. That their home

in Sabwani has been vandalized a lot in their father's absence which has affected their peace at work as they cannot abscond or get time to come and take care of the home which their father was highly depended on.

His wife, his son and his sister informed that they are ready to receive him back and participate in his reintegration by supporting him to repair his house which the door got broken after his arrest and also to ensure he has all the essentials needed for him to resettle and attend to his non-custodial orders if granted.

#### Prison Assessment, Rehabilitation And Re-integration

##### Inmate's Views

The inmate regrets his actions. He is taking personal responsibility for his mistakes and he assured that upon his release, his first stop will be at the AIC Saremek where he offended to seek for forgiveness. That he has learnt a lot in matters spirituality while in custody which has greatly reformed him. He commits to apply the golden rule to others upon his release. He is also ready to serve a non-custodial sentence.

##### Prison Officer's views

The prison authorities commended him for being disciplined and resourceful. He has actively been involved in spiritual work and has been among the inmate preachers for the time he has been in custody.

##### Family views

His immediate family and siblings indicated that incarceration has been a tough punishment for the convict at his age, which they are certain that he has learnt the hard way and that he has reformed for the better.

##### Local administration views

The village elder who was interviewed indicated that this was the first offence committed by the convict since he started staying with them in the area and is convinced that the convict has learnt a lesson. He had no reservation on his release to serve a non-custodial sentence.

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

The inmate is open to serve a non-custodial sentence. He promises that he will cooperate and adhere to all that will be required of him.

##### Conclusion

Your honor before court is an inmate aged 52. He is a father of two and a grandfather of one. He was arrested from his home in Sebواني village where he lived alone while his wife engaged in domestic work in Nairobi, a mutual agreement the couple had to ensure that the home is taken care of, and their two sons are educated as well. While at home, he used to actively engage in farming and other menial jobs at construction sites which prior to his arrest he was not actively able to undertake as before, due to his advanced age.



He is clearly aware of the offence he committed and takes full responsibility. He commits to seek for forgiveness upon his release from where he offended and assured of living a reformed life with the spirituality and rehabilitation lessons he has gotten while serving in prison. His immediate family and siblings assures that they will work together to resettle him, and coordinate well to support him serve a non-custodial sanction which is their prayer and which the convict is also open to serve. His village elder and neighbor is also welcoming to the idea of his return, and offer to be his support system as well.

Your honor with the inquiry's findings that the convict falls into the category of special needs offenders due to his age and having a strong support system with the positive prison's assessment of him, the convict is assessed to be fit for consideration on a non-custodial sanction.

#### Recommendation

In respect to the decision of your Lordship, I recommend a variation of his sentence to a Probation sentence for a period of six (6) months.

#### Decision

4. This application is based on the provisions of the Criminal Procedure Code namely Section 357, 362, 364 as read with 382 as read with Article 50(2)(p)(q) of *the Constitution* which 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.
6. This application is based on the sentence review report dated 20<sup>th</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.
7. 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).
  8. 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).
  9. 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 laxed 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.
  10. Time has come for the courts to rethink how custodial sentences are applied, so as to ensure a clearer, fairer, and more consistent sentencing approach across all levels of the judiciary. Any sentence review must remain mindful of the core purposes of sentencing. In my view, a proper sentence should also reassure the public that justice has been served — that the offender has been appropriately punished and their conduct condemned. From my long experience handling criminal matters, there is no credible evidence to show that harsher or more severe sentences produce any significantly greater deterrent effect.



11. In the instance case, I am hopeful that the review of custodial sentence and substitution of it with that of probation for six (6) months at the office of the Area Chief will contribute towards promoting the domain of non-custodial sentence. It is so ordered.

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

.....

**R. NYAKUNDI**

**JUDGE**

