



REPUBLIC OF KENYA



KENYA LAW
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**Kiprop v Republic (Criminal Revision E372 of 2025)
[2025] KEHC 17303 (KLR) (26 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17303 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E372 OF 2025
RN NYAKUNDI, J
NOVEMBER 26, 2025**

BETWEEN

FELIX KIMUTAI KIPROP APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged with house breaking contrary to Section 304(1)(b) and stealing contrary to Section 279(1) of the Penal Code. The brief facts of the particulars are that on the 7th day of July 2025 at around 1000hrs at Kaptagat Village Tuiyoluk Sub Location, Koitoror Location in Moiben Sub County within Uasin Gishu County broke and entered the building used as a dwelling house by Lavender Jemeli Jepkuto and stole Vitron TV 14 inches black in colour worth Kshs 16,000 = and mobile phone make OPPO A17 navy blue in colour worth Kshs 15,500 = property of the same Lavender Jemeli Jepkuto.
2. In the Alternative Charge the applicant was charged with handling stolen goods contrary to Section 322(1) as read with Section 322 of the Penal Code. Facts are that on the 7th day of July 2025 at around 1400hrs at Kaplagat Village Tuiyoluk Sub location, Koitoror Location in Moiben Sub County within Uasin Gishu County otherwise than in the course of stealing took retention of TV make Vitron 14 inch and phone make OPPO17A property of Lavender Jemeli Chepkuto. Count II: Escape from lawful custody contrary to Section 123 as read with Section 36 of the Penal Code. The facts are that on the 7th day of July 2025 at around 1950hrs at Tembelio Police Station in Moiben Sub County within Uasin Gishu County being in lawful custody of Tembelio Police Station cells, escaped from the said custody.
3. The Applicant pleaded guilty and was convicted and sentenced to serve 2 years' imprisonment in the 1st limb and 2 years' imprisonment on the 2nd limb on 28th July 2025.



4. As a consequence of that the Probation Officer filed a Sentence Review Report dated 20th November 2011 presentence review report which had the following components:

Introduction and sources of information

This is a sentence review report is in respect of Felix Kimutai Kiprop who is serving two-year imprisonment for the offence of House breaking c s 304(1) and stealing c s 279(b). In coming up with the report, we perused relevant court file, Police file, interviewed the inmate, prison authority, his family members, area administrators.

Current family and personal history family background.

The inmate is son to David Kibet and Jane Chebiwott who are both alive but living separately. His father went back to his ancestral home at Kapkoi area in Iten Elgeyo Marakwet County, while the mother stays at Kapchegir village in Koitoror location, Uasin Gishu County on 0.3-acre piece of ancestral land she acquired. The inmate stays with his mother who engages in casual jobs and farming. The family has 1 -acre piece of land at their ancestral home. The family felowships at ACK church Kapchegir although the inmate is not a member. He is the third born among eight (8) siblings namely: Mercy Cheptoo who lives in Kapsabet; Hillary Kiplagat a boda boda rider in Kapsabet town; Dennis Kibet at home; Vivian Cheruiyot a Form 2 student; Mitchell Chepchir a Grade 9 learner; Faith Chepkosgei Grade 6 learner and Emmanuel Kipkorir who is at home.

When interviewed, his family members led by his brother Hillary Kiplagat stated that the inmate has a history of criminal behavior and association with deviant peers. That he dropped out school out of his own volition and that he is a habitual thief. He intimated that the family has had to contend with several complaints level against him and that his arrest and eventual confinement came as a reprieve. They believe that institutional rehabilitation will serve to reform his behavior and cushion him from public wrath. The family opine that it was premature to release him.

Personal history

During our interaction, Felix stated that he was born in 2004. He attended Kaberi Primary school where he did his KCPE in 2021. He joined Ilula Secondary School in 2022 but later dropped in Form 2 term 1. He claims this was due to interference by his teachers who viewed him in bad light. However, this position was contradicted by his parents who linked his failure to father his education to truant character and negative peer influence. It is our observation that his unstable family background may have been a factor in his erratic school attendance. He thereafter engaged in menial jobs mainly at construction sites and farms. He later engaged in saw-milling activities. He is single with no dependents. Although we were unable to establish his past criminal records, the inmate confessed that he is not a first-time offender. He was arraigned in 2023 with similar offence. He says he was convicted and fined which the mother was able to pay securing his freedom at the time. He admits to drinking alcohol but denied drug abuse. His family members however, believe that he may be smoking bhang. During our interview, he was in good health and never alluded to history of chronic ailment.

Prison assessment rehabilitation and re-integration

Prison authorities submitted that for the short stint at the facility, the inmate has not had cases of indiscipline. He was yet to undergo any skills training. He has subscribed to protestant faith for spiritual wellness. He is deployed for farm-work. He stated that if released, he will join his family at Kapjagir at his usual accommodation which he shares with his siblings and resume his



casual engagements. It is our finding that his family members are opposed to his early release hence no arrangements are in place to ensure smooth re-entry and resettlement. Local administrators in opposing his early release, reported that the inmate who is a serial thief risks community wrath.

Offenders' attitude towards non-custodial sentence:

We found the inmate less remorseful and does not seem to regret his criminal conduct. He exhibited arrogance seeing no reason for his incarceration especially after the stolen items were recovered on him. He is nevertheless, receptive to community-based court sanction.

Conclusion

Your Lordship, the inmate in question hails from an unstable family background and has a history of criminal behavior and poor decision-making. His family and local administrators interviewed, believe his incarceration has been a reprieve and opposes his early release citing concerns over his potential to reoffend and the risk of community backlash.

Although he has engaged in farm work and spiritual activities while in prison, he was yet to undergo meaningful rehabilitation or skills training which are essential for his successful reintegration. His attitude remains defiant and he shows no real acknowledgment of the harm caused by his actions.

Given the lack of family support for his release and the high likelihood of reoffending, his continued incarceration is in the best interest of both the inmate and public safety. We opine that it is premature to have him readmitted back in the community. We prefer that he submits to structured institutional rehabilitation for the time being in order to guarantee his safety and protect the community in question from any possible risk.

Recommendation

My Lord, the above presentation indicates that the inmate's home environment remains unreceptive, with his family members opposed to his early release. In our considered opinion, releasing the inmate at this point in time, without a proper support structure to protect him and or the community risk may be counter-productive. We therefore find him currently NOT SUITABLE for early release and respectfully recommend that he continues to serve his sentence in custody.

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.
 1. The guiding principles on review of sentence post-conviction is well articulated by the Court of Appeal in *Bernard Gacheru Vs 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 Vs 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. 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.

10. Sentencing is a discretionary process mainly exercised by trial courts who have the advantage to appreciate the circumstances of the offence and how it applies to the sentencing objectives and principles within the regulatory framework of our sentencing policy guideline 2023. This court is



being asked to review the custodial sentence and have it substituted with non-custodial sentence. As I appreciate the record and the impugned decision on sentence, I bear in mind that this is one area of law which involves the weighing of many complex factors, it will always be possible to point to some factors which should arguably have been taken into account or left out of account; even if they should have been, the court should not intervene unless it is convinced that this would have resulted in the decision going the other way.

11. One of the most fundamentals of sentencing is proportionality meaning that elements on the gravity of the offence and moral blameworthiness of the offender carries more weight in a trial court figuring out the final verdict to be imposed. The more serious the crime and its consequences the heavier the sentence would be meted out. The doctrine of proportionality in sentencing demands that punishment or sanctions so passed speaks out loudly against the offence and the conduct of the accused person. The court in *R Vs Morrisette*, 1970 CanLII 642, 1 CCC (2d) 307 at Para 10 (Sask CA); *R v BO2*, 2010 NLCA 19 at para 51 held as follows:

In my view, the public can be best protected by the imposition of sentences that punish the offender for the offence committed, that may deter him and others from committing such an offence and that may assist in his reformation and rehabilitation. If the offender is one for whom reformation is beyond question, then the public can be protected only by depriving him of his freedom. In the case of other offenders, and particularly young offenders, the principal element or consideration, consonant with the maintenance of public confidence in the effective enforcement of the criminal law, should be the offenders' reformation and rehabilitation.

12. The applicant in this case through this application on review of sentence is inviting the court to depart from the objective of general deterrence to rehabilitation while serving on non-custodial sentence as recommended by the probation officer. I consider one of the key objectives to be met for a court to review the custodial sentence and have it substituted with a community service order or probation order is to achieve restorative justice approaches to sentencing. In my considered view it does remedy adverse effects of crime in a manner that addresses the needs of all parties involved in the criminal dispute. Hence restorative justice accomplishes rehabilitation of the offender, reparation to the victim and the community which in turn promotes a sense of responsibility to the offender to acknowledge the harm done to the victims of the offence. My reading of the probation officer report the applicant has not demonstrated regret or remorse for the offence. The victim described in the charge sheet and who gave evidence on oath have not filed a victim impact statement pursuant to Article 50(9) of *akn ke act 2010 constitution the Constitution* as read with section 3, 4 (2) & 9 of the *akn ke act 2014 17 victim Protection Act* No. 17 of 2014. The court in *R Vs Mahoney*, 2018 NLCA 16 on this very same subject under consideration held that:

Retribution is not the same as vengeance. Vengeance "has no role to play in a civilized system of sentencing." It represents an uncelebrated act of harm upon another, frequently motivated by emotion and anger, as a reprisal for harm inflicted upon oneself by that person. Retribution in a criminal context, by contrast, represents an objective, reasoned and measured determination of an appropriate punishment which properly reflects the moral culpability of the offender, having regard to the intentional risk-taking of the offender, the consequential harm caused by the offender, and the normative character of the offender's conduct. Furthermore, unlike vengeance, retribution incorporates a principle of restraint; retribution requires the imposition of a just and appropriate punishment, and nothing more.



13. In the context of this file and the recommendations by the probation officer one wonders how the inmate is very remorseful and pleads for forgiveness when no effort has been undertaken to seek restoration or victim offender mediation with the victims of the offence and the community who may be offended by his wrong doing. What would be the implication of a model such as this which has not incorporated the contribution of the victims of the offence in the early release of the offender. It seems to me that as a justice system would have created a chaotic crucible that will turn the experience of imprisonment into what might be described as a penal control frolic. I say this because the decongestion exercise is more of reducing prison population than about priorities and context of rehabilitation and reintegration of the offenders to the communities. The purpose of conditional release of probation or community service order is to contribute to the maintenance of a just, peaceful and safe society by means of decisions on the timing and conditions of release that will best facilitate the rehabilitation of offenders and their reintegration into the community as law abiding citizens.
14. The inference one draws from the facts of this case and the information provided by the probation officer weighed together with other components of the criminal justice systems on sentencing there exist no compelling or substantial circumstances in favor of the applicant to justify a lesser sentence. Moreover, upon careful consideration of the application for sentence review, the Court notes the findings presented regarding the inmate's home environment. The assessment indicates that the family remains unreceptive to his reintegration and has demonstrated opposition to his early release. The absence of a stable, supportive environment raises legitimate concerns as to whether the inmate would successfully reintegrate into the community without jeopardizing his own welfare or public safety. The Court is persuaded that a functional and reliable support system is indispensable in any consideration for early release and its absence weighs heavily against the applicant.
15. In light of the foregoing, the Court finds that releasing the inmate at this stage would be premature and potentially counter-productive. The risk posed by a return to a hostile domestic environment, coupled with concerns for community safety, renders the applicant unsuitable for sentence review at this time. Consequently, the application for sentence review is hereby dismissed and the inmate shall continue to serve the remainder of his sentence in custody as previously ordered.
16. Orders accordingly.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 26TH DAY OF NOVEMBER, 2025

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R. NYAKUNDI

JUDGE

