

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION NO. E295 OF 2025

NEHEMIAH KIPSANG APPLICANT

VERSUS

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

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

RULING

1. The Applicant was charged with stealing contrary to Section 268 as read with 275 of the Penal Code. The brief facts of the particulars are that on the 13th day of April 2025 at unknown time in Pioneer Estate Kapseret Sub-County within Uasin Gishu County stole one mobile phone Infix Smart valued at Kshs 13000/= one laptop make HP valued at Ksh 30,000/= Ksh 43,000/= the property of Nelson Musundi.
2. The Applicant was convicted and was sentenced to a fine of Ksh 50,000/= in default to serve 6 months' imprisonment on 3rd September 2025. The Applicant has approached this Court vide an application for review of sentence under Section 362 as read with Section 364 of the Criminal Procedure Code.
3. As a consequence of that, the Probation Officer filed a presentence review report which had the following components:

Introduction and sources of information

This is a sentence review report concerning Nehemiah Kipsang Bett who was sentenced to Six Months in prison for the offence of Stealing Contrary 268 as read with Section 275 of the Penal Code.

The report is based on findings from social inquiry interviews and a general assessment aimed at determining the inmate's suitability for serving the remainder of his sentence under a non-custodial arrangement. Interviews were conducted with the inmate at Eldoret

GK Prison, his family members, and the local area administration. Additionally, the lower court file was reviewed.

A. **Current home and personal circumstances**

The inmate is the second-born in a family of seven Siblings, born to Hosea Kibet(Deceased) and Unita Lagat, who is currently a farmer at Nandi County. The family owns 3 acres of land in where mixed farming is practiced. There is no previous criminal history in their family. The inmate is married to Sheila Chelagat and together they are blessed with on child. The family lives at their ancestral land in Nandi County. The family comes from a low socio-economic background. He has cordial ties with his family members, during his stay in prison, he has been in touch with his family through welfare phone and also was visited with some family members.

B. **Prison rehabilitation**

While in custody, the inmate has been actively involved in the prison activities, working in the kitchen. This role has played a significant part in instilling discipline, accountability, and a strong sense of personal responsibility. These skills are expected to support his rehabilitation and enhance his chances of leading a productive and honest life if granted a non-custodial sentence.

C. **Offenders' attitude and impact of imprisonment**

The inmate has expressed regret for his actions. He recognizes that being imprisoned has had a significant impact on him and that he has learned the importance of respecting other people property.

D. **Conclusion**

Your Lordship, in light of the inmate's relatively young age, the progress made toward serving his custodial sentence, and his clear expression of remorse, there is a strong indication of his potential for rehabilitation. Furthermore, the presence of a supportive home environment provides a conducive foundation for successful reintegration through community-based correctional measures.

E. **Recommendation**

The inmate may be considered to serve Community Service Order (CSO) for the remaining period of 1 months and 2 weeks, to be served at Tekeyat Primary School.

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.

6. 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. 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.*

9. 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.

10. In considering the application for sentence review, the Court has carefully weighed the Applicant's conduct during incarceration, the positive steps taken toward rehabilitation and the recommendations presented. The evidence shows that the Applicant has meaningfully engaged in constructive prison activities, particularly through his work in the kitchen, which has helped cultivate discipline, accountability and a sense of responsibility. His demonstrated remorse and appreciation of the impact of his actions further reflect a genuine shift in attitude. Notably, the assessment before the Court confirms that the Applicant has a supportive home environment willing to receive him and provide stability upon release, an essential component for successful

reintegration. These factors collectively persuade the Court that the Applicant has shown sufficient potential to reform and lead a productive and law-abiding life outside custody.

11. In light of these circumstances and guided by the principles of rehabilitation and restorative justice, the Court finds the application merited. The Applicant is hereby allowed to serve the remainder of his sentence under a Community Service Order at Tekeyat Primary School for a period of one month and two weeks, as recommended. It is so ordered.

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

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R. NYAKUNDI
JUDGE