



REPUBLIC OF KENYA



**Kamau v Republic (Criminal Revision E309 of 2025)  
[2025] KEHC 17297 (KLR) (25 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17297 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E309 OF 2025  
RN NYAKUNDI, J  
NOVEMBER 25, 2025**

**BETWEEN**

**KEFFA KAMAU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**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 12<sup>th</sup> day of September 2025 at Motherland Cyrus area in Ainabkoi Sub County within Uasin Gishu County stole one mountain bike black and white in colour valued at Ksh 25,000/= the property of Denn Juma Masika.
2. The Applicant was convicted on own plea of guilty and was sentenced to serve 12 months imprisonment on 2 October 2025.
3. The Applicant has approached this Court vide an application for review of sentence under Section 362 as read with Section 364 of the CPC.
4. As a consequence of that the Probation Officer filed a presentence review report which had the following components:

Current home and personal circumstances

The inmate hails from Kona Kubwa village; he worked as casual labor prior to his arrest. He is married and a father of one child. He is the son of Mr. Titus Kamau who is a retired teacher and Mrs Eunice Wairimu who is a casual laborer. Home environment is conducive for his release.

Prison assessment, rehabilitation and re-integration



The short period he has served in prison he has been engaged in farming and he has benefitted a lot on guidance and counselling. He is grateful that these skills will assist him back in the community should he be granted a non-custodial sentence.

Offenders attitude towards non-custodial measures

He owns up to his mistakes, he is remorseful and has shown willingness to perform community service for the remaining period of his sentence.

Recommendations

Your lordship, the inmate regrets his action and takes responsibility of his misdeeds. He has promised to change and be a law-abiding citizen. He has shown willingness to perform community service, granted he may perform at Kapsoya Police Station for the remaining six months seven days.

## 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.

6. 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.”

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 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.

9. Given the above principles the applicant Keffa Kamau has been found to be a fit applicant to have his sentence reviewed and substituted with non-custodial sentence of six months seven days to be served at Kapsoya Police Station. 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 25<sup>TH</sup> DAY OF NOVEMBER, 2025**

.....

**R. NYAKUNDI**

**JUDGE**

