



**Kiplagat v Republic (Criminal Revision E380 of 2025)  
[2025] KEHC 17322 (KLR) (25 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17322 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E380 OF 2025  
RN NYAKUNDI, J  
NOVEMBER 25, 2025**

**BETWEEN**

**HOSEA KIPLAGAT ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant was charged with malicious damage to property contrary to Section 339(1) of the Penal Code. The particulars are that on the 9<sup>th</sup> day of March 2025 at around 1500hrs at Kose village in Moiben Sub County within Uasin Gishu County willfully and unlawfully damaged the following four (4) water jerricans, five plates, one washing basin and pieces of clothes all valued at Ksh 3000/= the property of Jennifer Chemweno.
2. The Applicant was convicted on own plea of guilty and was sentenced to serve 2 years imprisonment on 1 April 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 Hosea Kiplagat who is serving a two-year imprisonment for the offence of Malicious damage to property contrary to section 339(1) 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 and the Victim Current family and personal history

Family background.

The inmate before this Honourable Court is the fifth-born in a family of eight children of Michael Mulera and Jennifer Chepmweno. His father is a peasant farmer residing in Kitale, while his mother operates a small business at Moiben Trading Centre. Among his seven siblings, some are engaged in



farming, casual labour, and business, with one currently serving a custodial sentence. The inmate's parents separated in 2009 due to domestic conflicts, after which he was primarily raised by his mother in Moiben. Interviews with family members indicate that they are willing to receive him back home and are optimistic that he has reformed and will not reoffend. Further inquiry with the victim, who is also the inmate's mother, revealed that she has forgiven her son and is willing to welcome him back. This inquiry has therefore established that the inmate's current home environment is supportive and conducive to his rehabilitation and reintegration into the community.

#### Personal history.

The inmate was born in 1997 in West Pokot County. He began his education at St. Macho Muslim Primary School before transferring to Meibeki Primary School, where he completed his primary education and sat for the KCPE in 2010, attaining 346 marks out of 500. He subsequently attended St. Anthony Boys Secondary School in Moiben, obtaining a mean grade of C plain in the 2014 KCSE. Although he claimed to have enrolled for a Diploma in Education at Moi University, this was refuted by his mother. He later joined Alexandria College in Eldoret for a Diploma in Computer Science but dropped out in the first year due to lack of school fees. In 2019, he enrolled at Moiben Technical and Vocational Training Centre for a course in Agricultural Engineering but again discontinued during the first semester for financial reasons. After leaving school, he briefly worked as a tout in Eldoret and later as a casual security guard at Unilever for three months. Since then, he has relied on casual labour for his livelihood. The inmate is single, has no children, and prior to his incarceration resided in a one room semi-permanent structure within his mother's homestead. During our inquiry, it was established that his house is habitable.

#### Prison assessment rehabilitation and re-integration

During his incarceration, the inmate has demonstrated commendable efforts towards rehabilitation. He has received counselling and training on the consequences of crime and has shown a strong willingness to reform. 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 has admitted to committing the offence and reports that his time in custody has been a turning point in his life. He describes himself as reformed and expresses a sincere desire to change for the better. He is appealing for a non-custodial sentence, noting that he has reconciled with his mother.

#### Conclusion

Your Lordship, the prison authorities commend the inmate for his discipline, cooperation, and positive conduct during incarceration, including his willingness to apply the skills he has acquired. The complainant, who is also his mother, has indicated that she does not oppose her son's release, stating that she believes he has learnt his lesson and is now a reformed individual. Similarly, community members and local administrators from Moiben have expressed their hope that the inmate has reformed and have confirmed their willingness to assist him with reintegration and rehabilitation.

#### Recommendation

Considering that the victim, who is the inmate's mother is amenable to a non-custodial sentence and that his home environment is suitable for his reintegration and rehabilitation, it is recommended that he be placed on a nine-month Community Service Order at Moiben Chief's Office.



## 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 nine months to be served at Moiben Chief's Office. It is so ordered.

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 25<sup>TH</sup> DAY OF NOVEMBER, 2025**

.....

**R. NYAKUNDI**

**JUDGE**

