

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CRIMINAL REVISION NO. E287 OF 2025

ISAACK KUOBA
APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

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

RULING

1. The Applicant was charged with stealing stock contrary to Section 278 of the Penal Code. The brief facts of the particulars are that on the diverse dates between 8th August and 9th August 2025 at Jabali area, Mois Bridge Location in Soy Sub-County within Uasin Gishu County stole 1 Freshian Bull valued at Ksh 50,000/= the property of Jackson Meli. He pleaded guilty to the offence convicted and sentenced to serve 3 years imprisonment on 28th August 2025.
2. The Applicant has approached this Court vide a report from the Probation Office stating as follows;

PART IV: REPORT

INTRODUCTION AND SOURCES OF INFORMATION

This is a sentence review report in respect of Isac Kuoba who is serving 36 months' sentence for the offence of Stealing livestock. In preparing the report, the Court file and Police file were perused, interviewed Prison authorities, Inmate, area chief, and his significant others

CURRENT FAMILY AND PERSONAL HISTORY

The inmate before the court is the son of Yohana Rubia Sifuna and Magaret Nasimiyu Kamasi of Lukuyani Location within Kakamega County, his parents own approximately 3 acres of land both in Trans Nzoia County and Kakamega County. He is the last born among five siblings, who are all grown up and leading different lives in different locations within Uasin Gishu County. There is no history of criminality in the family. The inmate has been living at Moi's Bridge location for more than a decade. He is married to Emma Akinyi and has six Children who are still in school. He is a class eight dropout due to what he claims as a lack of school fees. Before the commission of the offence and his imprisonment, he was living a full-time Mason(fundi)struggling with alcoholism. The inmate's mother indicated that the family is ready and willing to welcome him back home.

PRISON ASSESSMENT REHABILITATION AND RE-INTEGRATION

During his time in prison, the inmate has shown a positive attitude towards rehabilitation. He had been working at the Industry section. The inmate states that he has undergone a personal transformation. Upon his release, he plans to return home where his children were taken after he was convicted. The prison authorities regard him well and recommends his early release.

OFFENDERS' ATTITUDE TOWARDS NON-CUSTODIAL SENTENCE:

The inmate accepts the non-custodial sentence and is willing to serve to complete his sentence at home since he is the sole Breadwinner

CONCLUSION

Your Lordship, the inmate before court is a 38-year-old man who was sentenced to serve 3 years for the offence of Stealing livestock. He has under gone rehabilitation and the prison authorities regard him well. He is a family man and a sole breadwinner. He has a supportive family that is willing help in the reintegration of the inmate to the community.

RECOMMENDATION

Considering the above, I recommend that he be placed on Probation Orders for the remaining 24 Months of his Sentence. During His time on Probation he will be guided and Counselling accordingly.

Decision

3. 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.
4. 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."

5. 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”

6. 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.

7. The cardinal principle in sentencing is that of personality. The learned Author Richard G Fox in a paper presented at the Northern Territory Stipendiary Magistrates' Annual Conference 30th August 1993 had this to say on the proportionality in sentencing:

“The principle of proportionality requires that the severity of the sanction is equal to the seriousness of the offence. This concept has proved difficult to implement. There have been two main reasons for this. First, there is no true appreciation of what factors are relevant to the seriousness of an offence. It has been suggested that this is gauged solely by reference to the amount of unhappiness caused by the offence. Secondly, there is no principled method for ascertaining the severity of punishment. This too has been addressed, by employing the same common denominator: happiness. These conclusions flow from the fact that a utilitarian theory of punishment best underpins the principle of proportionality. A consideration of the law of the criminal defences has shown that the courts over the ages

have employed essentially consequential considerations in evaluating the seriousness of 'criminal' behavior. This adds weight to the theory that, at the bottom, offence seriousness is solely a variable of the amount of harm caused by the offence. Harm includes culpability; not because culpability is intrinsically relevant, but because of the close connection between intentions, actions and consequences.

8. From the strength of the discussed principles, mitigating factors adduced by the Applicant of being a first offender, being remorseful and the lessons learnt while he has been serving in custodial sentence and the latest social inquiry report dated 20th November 2025 persuades me to exercise discretion of reviewing the custodial sentence to have it substituted with non-custodial for the remainder of the period of 24 months on probation. It is so ordered.

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

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**R. NYAKUNDI
JUDGE**