

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CRIMINAL REVISION NO. E296 OF 2025

DANIEL MUIGA
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(1) as read with Section 275 of the Penal Code. The brief facts of the particulars are that on the 9th day of August 2025 at around 1930hrs at Langas estate in Kapseret Sub County within Uasin Gishu County jointly stole one mobile phone make Samsung A05 valued at Ksh 26300/= property of Stephen Ouma Okello. The Applicant was convicted on own plea of guilty and was sentenced to a fine of Ksh 50,000 in default to serve 6 months' imprisonment on 20 September 2025.
2. The Applicant has approached this Court vide a Probation Sentence Review Report stating as follows;

D. CURRENT HOME AND PERSONAL CIRCUMSTANCES

My Lord, the inmate is the son of the late John Muiga and the late mama. He is a resident of Langas the inmate is the last born in a family of 7 children. The inmate and his siblings were orphaned at a young age. They have been under the care of relatives and good Samaritans. Before his arrest, he worked as a casual worker in the informal settlements of Langas and also ran errands within Eldoret City. He attended Langas primary school where he dropped out of for two due to what he says lack of school fees. He is not yet married.

E. PRISON ASSESSMENT, REHABILITATION, AND RE-INTEGRATION:

Your Lordship, the inmate was carrying out farm work during his stay in prison. Prison authorities have nothing negative about him. The complainant has forgiven the inmate stating that he has moved on with his life and has no objection to his early release.

The inmate's family is looking forward to a reunion. They are eagerly waiting for his release.

E. OFFENDER'S ATTITUDE TOWARDS NON-CUSTODIAL MEASURES

My Lordship, the inmate is positively responsive to early release. He is ready to spent the rest of his remaining non-custodial sentence. He is also willing to start a small business with Langas area after release. He has learned that good things don't come easily.

F. RECOMMENDATIONS

Your Lordship, with regards to the above information, the inmate is recommended to serve a Community Service Order for a period of 2 months.

3. Whether on appeal or review the guiding principles for the Court to exercise discretion remain to be as articulated in the cases of **Benard Kimani Gacheru vs. Republic [2002] eKLR, Ogolla s/o Owuor vs. Republic [1954] EACA 270 & Shadrack Kipkoech Kogo -vs- Eldoret Criminal Appeal No. 253 of 2003.**
4. The Post-Conviction Sentence Report is moderate along the categories of restorative justice than retributive or deterrent objectives of sentencing. It is often said that restorative justice is a way of seeing a crime as entrenched in building relationships and transforming the offender to be a law-abiding citizen.
5. It is appreciated from the record that the Applicant in this case is ready and willing to serve the remainder of the sentence within the home-based rehabilitation. It is for these reasons I exercise discretion under Section 362 of the CPC to review the custodial sentence and have it substituted with that of non-custodial for the balance of the period computed as two months. Therefore the said sentence shall be served on C.S.O based at Langas Police Station. It so ordered.

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

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**R. NYAKUNDI
JUDGE**