



REPUBLIC OF KENYA



KENYA LAW
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**Mumasi v Republic (Criminal Revision E310 of 2025)
[2025] KEHC 17337 (KLR) (25 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17337 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E310 OF 2025
RN NYAKUNDI, J
NOVEMBER 25, 2025**

BETWEEN

PHILIP MUMASI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Representation:

M/s Sidi for the State

1. The Applicant was charged with stealing contrary to Section 268 as read with Section 275 of the Penal Code. The brief facts of the particulars are that on the 29th May 2025 at around 1000hrs at Siyot village, Kamagut Location in Turbo Sub-County within Uasin Gishu County, jointly with others not before Court, stole a water pump valued at Kshs 30,000/= the property of James Kipkoech. The Applicant pleaded guilty and was convicted and sentenced to serve 2 years imprisonment on 19 August 2025.
2. The Applicant has approached this Court vide a sentence review 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 Philip Mumasi who is serving 24 months a sentence for the offence of Stealing. 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 court the is the son of John Mumasi and one Joyce Ayuma of Luanda, within Kakamega County. He is the last born among four siblings; who are all grown up and leading different lives in different locations within the Republic of Kenya, There is no history of criminality in the family.

The inmate was born in 2000 at Moi's Bridge, Soy sub-county. He has secondary school level of education which he completed at Friends Secondary School, Binyenya. Prior to commission of the offence and his imprisonment, he was living in Turbo's Jua Cali area, where he worked as a mason. 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 not been allocated to any section of labor in the prisons. He has therefore not gained any skills. The inmate states that he has undergone personal transformation. Upon his release, he plans to return home. 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.

Conclusion

Your Lordship, the inmate before court is a 35 year old man who was sentenced for 2 years for the offence of Stealing. He has under gone rehabilitation and the prison authorities regard him well. The inmate has not acquired any skill because he was yet to be allocated to the labor sections in Prison. 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 8 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. Having handled many criminal cases it is right to say that the sentencing policy of a country reflects the moral, the rule, rationale, integrity and the judgment prevailing in a legal system on imposition of sentence. Sentencing is a crucial part of our criminal justice system where Judges and Magistrates after hearing both sides of the criminal case move to conviction upon a finding of guilty with an appropriate sentence being imposed depending on the individual circumstances of each case. In the case at bar the mitigating factors are in favor of the applicant. In addition, the social inquiry report dated 25th November 2025 found the Applicant to be suitable to serve a non-custodial sentence on probation for



the next eight (8) months. I therefore exercise discretion to review the sentence and have the Applicant removed from Prison custody to serve under the supervisory of the Probation Officer. It is so ordered.

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

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R. NYAKUNDI

JUDGE

