

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MURANG'A**  
**HIGH COURT CRIMINAL REVISION NO. E009 OF 2025**

**JOSHUA KANINA MAINA.....**  
**APPLICANT**

**VERSUS**

**REPUBLIC.....**  
**RESPONDENT**

**RULING**

1. The Applicant was tried and convicted of the offence of housebreaking and stealing pursuant to the provisions of **Section 306 of the Penal Code**. The particulars were that on the 12th November 2023 in Kiruri Location Kangema Sub-location within area of Murang'a County he broke and entered into a and stole two pieces of steel rods valued at Kshs. 1000. The Applicant was convicted on his own plea of guilty and sentenced to 4 years imprisonment on 14<sup>th</sup> November 2023.
2. The Applicant made an Application to this Court dated 31<sup>st</sup> January 2025 for the review of his sentence. The Application anchored in **362** and **364** of the **Criminal Procedure Code** as read together with **Article 165(6)** of the **Constitution of Kenya** and **Section 3(2)** of the **Community Service Order Act**, seeking the following Orders:

***“That the Honourable Court be pleased to review the sentence meted upon him and consider the applicant for a non-custodial sentence for the remainder of the sentence.”***

3. P. Mwangi for the ODPP concedes to the application indicating that the sentence was excessive considering that value of the items stolen was kshs.1000 and that the accused was convicted on his own plea of guilty thereby saving the court's time. Counsel also noted that the Court embarked on sentencing without calling for a pre-sentence report. Counsel is of the view that a probation sentence would be appropriate in the circumstances.
4. The Court notes that the Appellant pleaded guilty to the charge which saved the Court's time in trial. The Court also takes note that the value of the items stolen was low to wit Kshs.1000. According to the same report, the area Administrator at the Applicant's locality is not opposed to the imposition of a non-custodial sentence on the Applicant. The only glaring concern by this court is the absence of a probation report to guide the court in the revision of the sentence.
5. Based on the foregoing, the Court is inclined to give the Applicant a second chance thus makes the following orders:
  - i. ***The application for review is granted.***
  - ii. ***The Applicant will serve the remaining years of the sentence under probation subject to Probation Office Murang'a availing a report as to the area and supervision of the Applicant.***
  - iii. ***The probation term should take effect on the date of submission and not later than 20<sup>th</sup> November 2025.***
  - iv. ***Supervision within Kangema office by Office in Charge.***

**DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 20<sup>TH</sup>  
DAY OF NOVEMBER, 2025.**

**HON. T. W. Ouya  
JUDGE**

ORIGINAL