

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION NO. E304 OF 2025

JACKSON NGAIRA
APPLICANT

VERSUS

REPUBLIC.....
RESPONDENT

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

RULING

- 1.** The Applicant was charged with house breaking contrary to Section 304(1) (b) and stealing contrary to Section 279(b) of the Penal Code. The brief facts of the particulars are that on 9th day of July 2025 at around 0800hrs at Chemnego village at Kamagut Location in Turbo Sub-County within Uasin Gishu County broke and entered the building used as a dwelling house by Kelvin Kiptoo and stole one gas cylinder 6kg with burner, one padlock with keys and one bar soap all valued at Kshs 4,500/= the property of Kelvin Kiptoo.
- 2.** The Applicant was convicted and sentenced to serve 18 months imprisonment on 7 October 2025.
- 3.** The Applicant has approached this Court vide an application for review of sentence under Section 362 as read with Section 364 of the CPC.
- 4.** As a consequence of that the Probation Officer filed a presentence review report which had the following components:

Introduction and sources of information

This is a sentence review report in respect of Jackson Ngaira who is serving six months and 18 months sentence for the offence of housebreaking. In preparing the report, the Court file and Police file were perused, interviewed Prison authorities, Inmate, area chief, mother (Nefrita Monge).

Current family and personal history

The inmate before court is the son of the late Stephen Ngaira and one

Nefrita Monge of Kona Mbaya in Moi's Bridge, Soy sub-county. He is the eldest among five siblings; who are all school going. 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 labour 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 25year old man who was sentenced for six months and 18 months for the offence of housebreaking. 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 labour 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 period of his sentence (1 year 2 months). During this period, he will be counselled and guided accordingly.

Decision

4. In determining whether to impose a custodial or non-custodial sentence, the court is required to take into account the following factors: -

a) Gravity of the offence: - sentence of imprisonment should be avoided for misdemeanour.

b) Criminal history of the offender. Taking into account the seriousness of the offences, first offenders should be considered for non-custodial sentence.

c) Character of the offender: - non-custodial sentence are best suited for offenders who are already remorseful and receptive to rehabilitative measures.

d) Protection of the community: - where the offender is likely to pose a threat to the community.

e) Offender's responsibility to third parties: - where there are people depending on the offender.

5. Having carefully reviewed the Sentence Review Report and the circumstances of this case, I am satisfied that the Applicant meets the criteria for a community-based sentence. He has already served one (1) month and one (1) weeks in custody, during which he has demonstrated good conduct and shown a positive attitude towards rehabilitation. The report establishes that he is a 25-year-old first offender with no history of criminality in his family. He is the eldest son

of the late Stephen Ngaira and Nefrita Monge of Kona Mbaya in Moi's Bridge, Soy Sub-County, and has four younger siblings who are all school going. The Applicant has secondary school education, having completed his studies at Friends Secondary School, Binyenya, and prior to his arrest worked as a mason in Turbo's Jua Cali area. The prison authorities regard him well and have recommended his early release, noting that he has undergone personal transformation during his incarceration. His mother has confirmed that the family is ready and willing to welcome him back home. The Applicant has accepted the non-custodial sentence and expressed willingness to complete his sentence at home, demonstrating his receptiveness to rehabilitative measures. His strong family support system presents a valuable resource that can be leveraged to facilitate his successful reintegration into the community.

6. Accordingly, I find that the remaining period of one (1) year and two (2) months is appropriate and shall be served under probation supervision. The Applicant is hereby placed on Probation for the said period, during which he shall report regularly to the Probation Officer assigned to supervise him in Soy Sub-County. The Applicant shall comply with all conditions set by the probation officer, including counseling and guidance sessions aimed at his rehabilitation and reintegration into the community. The supervising probation officer shall submit quarterly reports to this Court detailing the Applicant's compliance and progress. Any breach of the conditions of this probation order shall result in immediate cancellation, and the Applicant shall be remanded to serve the remainder of his sentence in custody.

**SIGNED, DATE AND DELIVERED AT NOVEMBER THIS 26TH DAY OF
NOVEMBER, 2025.**

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**R. NYAKUNDI
JUDGE**