



**Njehia v Republic (Criminal Revision E312 of 2025)
[2025] KEHC 17329 (KLR) (26 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17329 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E312 OF 2025
RN NYAKUNDI, J
NOVEMBER 26, 2025**

BETWEEN

JAMES NJEHIA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged with stealing contrary to Section 268 as read with Section 273 of Penal Code. The brief facts of the particulars are that on the 27th day of April 2025 at Teleview Area Kesses Sub-County within Uasin Gishu County stole four quarter standard flat valued at Kshs 5000 = property of Weldon Cheruiyot.
2. On Count II: on the 27th day of April 2025 at Teleview Area Kesses Sub-County within Uasin Gishu County otherwise than in the course of stealing dishonestly retained four quarter standard flat knowing as having to believe them to be stolen.
3. The Applicant was convicted and sentenced to serve 1 year imprisonment on 20 May 2025.
4. The Applicant has approached this Court vide an application for review of sentence under Section 362 as read with Section 364 of the CPC.
5. As a consequence of that the Probation Officer filed a presentence review report which had the following components:

A. Introduction and sources of information

This is a sentence review report concerning James Njehia who was sentenced to Six Months in prison for the offence of Stealing Contrary 268 as read with Section 275 of the Penal Code.



The report is based on findings from social inquiry interviews and a general assessment aimed at determining the inmate's suitability for serving the remainder of his sentence under a non-custodial arrangement. Interviews were conducted with the inmate at Eldoret GK Prison, his family members, and the local area administration. Additionally, the lower court file was reviewed.

B. Current home and personal circumstances

The inmate is the first-born in a family of two Siblings, born to Paul Wambua and Lillian Wamboi, who are currently casual labourers in Uasin Gishu County. The family owns 2 acres of land in where mixed farming is practiced in Televue Estate. There is no previous criminal history in their family. The inmate is not married and does not have a child. The inmate lives at their ancestral land in Nandi County. The family comes from a low socio economic background. He has cordial ties with his family members, during his stay in prison, he has been in touch with his brother through welfare phone but nobody has visited

C. Prison rehabilitation

While in custody, the inmate has been actively involved in the prison activities, he was assigned to do general cleaning.

D. Offenders' attitude and impact of imprisonment

The inmate takes full responsibility of the offence committed he is willing to serve noncustodial sentence.

E. Conclusion

Your Lordship, the inmate readily accepts responsibility for the offence committed and shows remorse. He promises to be a law-abiding citizen. He is ready and willing to serve the remaining part of his sentence within the community.

However, the family is not ready to receive him back at home since they said he has been habitual thief, they added that during his arrest the community member almost killed him through mob justice. They believe that the community is still against him being inter-grated back to the community. They request that he completes his sentence in custody and with that the community might be lenient on him.

E. Recommendation

Given the above findings, our office therefore finds him unsuitable for non-custodial sentence and recommends that he completes the remaining sentence in custody.

Decision

6. This application has been considered under Article 50(2)(p)(q), 6(a)(b) of *akn ke act 2010 constitution the Constitution* as read with Section 362 & 364 of the Criminal Procedure Code. The guiding principles on review of sentence post-conviction was well articulated by the Court of Appeal in *Bernard Gacheru Vs Republic* [2002] eKLR in which 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.”

7. This was also the position taken by the Court in *S Vs Malgas* 2001 (1) SACR 469 (SCA) where it was 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”

1. The inference one draws from the facts of this case and the information provided by the probation officer weighed together with other components of the criminal justice systems on sentencing there exist no compelling or substantial circumstances in favor of the applicant to justify a lesser sentence. Moreover, upon careful consideration of the application for sentence review, the Court notes the findings presented regarding the inmate’s home environment. The assessment indicates that the family remains unreceptive to his reintegration and has demonstrated opposition to his early release. The absence of a stable, supportive environment raises legitimate concerns as to whether the inmate would successfully reintegrate into the community without jeopardizing his own welfare or public safety. The Court is persuaded that a functional and reliable support system is indispensable in any consideration for early release and its absence weighs heavily against the applicant.
2. In light of the foregoing, the Court finds that releasing the inmate at this stage would be premature and potentially counter-productive. The risk posed by a return to a hostile domestic environment, coupled with concerns for community safety, renders the applicant unsuitable for sentence review at this time. Consequently, the application for sentence review is hereby dismissed and the inmate shall continue to serve the remainder of his sentence in custody as previously ordered. Orders accordingly.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 26TH DAY OF NOVEMBER, 2025

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R. NYAKUNDI
JUDGE

