Ngetich alias Moffat v Republic (Criminal Revision E375 of 2025)
[2025] KEHC 17325 (KLR) (25 November 2025) (Ruling)

Neutral citation: [2025] KEHC 17325 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CRIMINAL REVISION E375 OF 2025

RN NYAKUNDI, J

NOVEMBER 25, 2025

BETWEEN

OBADIA KIPKETER NGETICH ALIAS MOFFAT ..... APPLICANT

AND

REPUBLIC ..... RESPONDENT

RULING

1. The Applicant was charged with stealing stock contrary to Section 278 of the Penal Code. The brief facts of the particulars are that on the 2nd day of November 2024 at Tuiyboy area in Soy Sub County within Uasin Gishu County jointly with another not before Court stole two Asian Cows valued at Ksh 110,000 the property of James Kipchumba Rono. The Applicant was convicted and was sentenced to serve 2 years imprisonment on 9 September 2025.

2. The Applicant has approached this Court vide a report from the Probation Office stating as follows;

INTRODUCTION AND SOURCES OF INFORMATION

This is a sentence review report called for by the Eldoret High Court in respect of the report appraises the current home situation and personal circumstances including family including family relationships. The report also highlights the convict's willingness towards a non-custodial sentence. It ends with the conclusion.

FAMILY BACKGROUND

The inmate was born to Elizabeth Maiyo and Topkechir Kimenjo who are residents of Tuiyboy area be very old. He is the fifth born in a family of eight (8). He hails from a nuclear family which is domestic and commercial purposes. Farming for the family has been a source of livelihood and has save for the inmate who also had another stealing case in Eldoret court that was ongoing when he was arrested for this offence he was convicted for and two of them are doing stable farming in

Eldoret while one runs a business in Mombasa. His other three followers are in form two and three respectively.

PERSONAL HISTORY

The inmate is aged 26 years. He attended Cheplelabei primary where he scored 260 marks out of 500 in 2013. He then proceeded to Olalui boys where he dropped out at will in form three, in 2016. He then left home to join his uncle in Kilgoris where he indulged in helping him operate his tractor. He would then come back home from Kilgoris where he was alleged to have stolen the disk plough of his uncle's tractor, a case that was active in Eldoret town when he was convicted for this matter.

While at home, he did motorcycle riding and partly engaged in farming. He joined a wayward company and became adamant to any parental guidance and caution from the authorities. He is said to have been stubborn by his elder sister while his brother, completely declined to give any comment about him, despite several attempts for the inquiry to indulge him. He has one child aged four out of an illicit relationship who the family is not aware of and lives with the mother. The inmate was staying single within his parent's home up to the time of his arrest and subsequent conviction.

PRISON ASSESSMENT REHABILITATION AND RE-INTEGRATION

The prison authorities informed that being a youthful inmate, he has been undergoing behavior change programs and recommended that, he still needs close supervision. The inmate is receptive to community-based court sanction and commits to adhere fully if considered.

CONCLUSION

Your honor before this court is a youthful inmate who regrets having been swayed into bad influence and other unbecoming behaviors. He acknowledges that he also has another stealing case with Eldoret High Court which he was actively attending while on bond before his incarceration. He has frail to be engaged much, left it to the court to determine the next move for him, since he never heeded to any advice before. Nonetheless, his mother has visited him once while serving in prison. His local administrative unit interviewed ie the chief and the village elder opined that the convict's safety may still not be guaranteed at this time. They informed that the locals were very upset and bitter with him and more discontented even with the short sentence period the convict was sentenced to serve, after he entered a plea bargain for this matter. The complainant in the matter shared the same sentiments and expressed that the offender should just serve his sentence to completion since his sentence period was way too short and cannot be compared to the agony he put him through after his stealing expedition. He is strongly opposed to any sentence variation for him.

Your honor, though the inmate is a youthful offender who should be considered for a community friendly rehabilitation strategies, the inquiry assessed that his community is still not friendly to him and therefore lacks a soft landing and acceptance. His family members interviewed do not also present as a committed support structure for his rehabilitation and appears to be tired with his criminal conduct. He is largely considered as a high risk offender by his members' of community as well as the complainant who is his neighbor.

RECOMMENDATION

In respect to the decision of your Lordship, I recommend no variation of his sentence.

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. From the strength of the discussed principles, mitigating factors adduced by the Applicant of being a first offender, being remorseful and the lessons learnt while he has been serving in custodial sentence and the latest social inquiry report dated 20th November 2025 persuades me to exercise discretion of not reviewing the custodial sentence. The risk factors as explained by the Probation Officer are real and therefore likely to impact negatively on the rehabilitation of the offender. It is so ordered.

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

....

R. NYAKUNDI

JUDGE