

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION NO. E340 OF 2025

TOM OKOTH
APPLICANT

VERSUS

REPUBLIC..... **RESPONDENT**

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

RULING

- 1.** The Applicant was charged with malicious damage to property contrary to Section 339(1) of the Penal Code. The brief facts of the particulars are that on diverse dates between 20th August 2023 and 2nd September 2025 at Moi Teaching and Referral Hospital (MTRH) in Ainabkoi Sub-County within Uasin Gishu County the applicant willfully and unlawfully damaged 12 water taps all valued at Kshs 6,600/= the property of the said MTRH.
- 2.** The Applicant was convicted on own plea of guilty and was sentenced to serve 2 years imprisonment in Count 1 and 2 years imprisonment in Count 2 on 17th September 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 sentence review report in respect of Elvis Tom, who is currently serving a five-year custodial sentence for the offence of Malicious damage to property contrary to section 339 Penal Code. The report is informed by findings from social inquiry interviews and a comprehensive assessment undertaken to evaluate his 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. In addition, the lower court file was perused.

Current home and personal circumstances

The inmate hails from Homa Bay County and is the son of the late Naftali Aroko and Elida Akeyo. He has one sibling, a sister named Caroline Anyango. He is married to two spouses, Lensa Akinyi and Gladys Serem, who both reside at the family home in Kasipul Kabondo sub-location, where they are raising their three children.

He dropped out of school at form two and has since relied on casual employment. Over time, he acquired skills in welding and fabrication, which formed the basis of his informal work prior to his arrest. At the time of his arrest, he was living alone in Kipkaren estate in Eldoret City, although he regularly visited his family in Homa Bay and maintained strong ties and consistent contact with them.

Prison rehabilitation

The inmate has been in custody for approximately two months, a period too brief for significant rehabilitation programs to be undertaken. Nonetheless, he has gained a clear understanding of the seriousness of his actions and the consequences associated with the loss of personal freedom. During this period, he has been participating in farm work within the prison, specifically assisting in the ongoing maize harvest.

Offenders' attitude and impact of imprisonment

The inmate has expressed remorse for his actions. He acknowledges that his imprisonment has had a significant effect on his life. He further recognizes the importance of respecting other people's property.

Conclusion

Your Lordship, the inmate has served only two months of his two-year custodial sentence. Although he is a family man with two spouses and

three children who rely on him, and despite his background in casual work and welding, the gravity of the offence cannot be understated. He was convicted for damaging and unlawfully removing water taps from Moi Teaching and Referral Hospital, a critical public institution. While our inquiry confirms that this was a single incident, it was nonetheless a deliberate and well-planned act carried out under the guise of collecting scrap metal.

Recommendation

Given the seriousness of the offence and its potential impact on essential public services, continued incarceration remains necessary as a deterrent measure. In light of the short duration served so far, he is not suitable for a non-custodial sentence at this stage.

Decision

5. 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.

6. The Community Service Orders Act provides this Court with discretion to order an offender to perform unpaid community service as an

alternative to incarceration. This sentencing option becomes available where an accused person is found guilty of an offence carrying a maximum punishment of three years' imprisonment. The Act further permits courts to exercise this discretion even for offences attracting sentences exceeding three years, provided the court deems it appropriate that the sentence, or part thereof, be served through unpaid public works within the community rather than through confinement.

7. Upon careful consideration of the circumstances surrounding this case, including the nature of the offence charged and the Applicant's personal background as outlined in the Sentence Review Report, I find that this matter appropriately falls within the ambit of the Community Service Orders Act. The Applicant has served two months in custody and has demonstrated remorse for his actions. While the Probation Officer recommended continued incarceration, I am persuaded that the rehabilitative objectives of sentencing can be better achieved through community-based sanctions. Accordingly, I hereby order that the Applicant shall serve a twelve (12) months sentence by performing community service under the supervision of the locality Chief's Office. The supervising officer shall, through the probation department, file monthly progress reports with this Court. Should the Applicant breach any condition of this community service order, the same shall be liable to cancellation, and the custodial sentence shall be reinstated forthwith.

8. It is so ordered.

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

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**R. NYAKUNDI
JUDGE**

