



REPUBLIC OF KENYA



**Sikuku v Republic (Criminal Revision E321 of 2025)
[2025] KEHC 17301 (KLR) (26 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17301 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E321 OF 2025
RN NYAKUNDI, J
NOVEMBER 26, 2025**

BETWEEN

EMMANUEL SIKUKU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged with Malicious damage to property contrary to Section 339(1) as read with Section 339(3) (b) of the Penal Code. The brief facts of the particulars are that on the 6th day of April 2025 at Illulah Area in Ainabkoi Sub County within Uasin Gishu County, willfully and unlawfully damaged electricity meter box valued at Ksh 5000/= the property of Mary Wamboi.
2. The Applicant pleaded guilty, was convicted and sentenced to 2 years imprisonment on 11 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 sentence review report in respect of Emmanuel Sikuku, who is currently serving a two-year custodial sentence for the offence of malicious damage to property, contrary to Section 339 of the 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 is the seventh-born in a family of nine children. His late mother never married and remained at her parental home in Ilula Sub-location, Ainabkoi Sub- County, where the inmate was born and raised. The family structure is complex, with the inmate and his siblings having different fathers. His biological father, Charles Ngetich, resides in Nandi County and has recently expressed willingness to offer support and guidance.

The inmate has no formal education and has largely relied on casual labour to sustain himself. Prior to his arrest, he was engaged in casual work at a small hotel within the local shopping centre. His personal circumstances are marked by socio-economic hardship, limited stability, and a weak family support system. The home environment has historically been unstable, with minimal supervision and inconsistent family cohesion. These challenges appear to have contributed to strained relationships, which are directly relevant to the current offence. The incident involving malicious damage specifically the destruction of a relative's window and door reflects underlying family tensions and the absence of structured emotional and social support. Despite this, the inmate's father has stepped forward and expressed readiness to take responsibility and support his reintegration, which may provide a more stable environment moving forward.

Prison rehabilitation

While in custody, the inmate has been actively involved in the prison activities, working in the farm. This role has played a significant part in instilling discipline, accountability, and a strong sense of personal responsibility. These skills are expected to support his rehabilitation and enhance his chances of leading a productive and honest life if granted a non-custodial sentence.

Offenders' attitude and impact of imprisonment

The inmate has expressed regret for his actions. He recognizes that being imprisoned has had a significant impact on him and that he has learned the importance of respecting other people property.

Conclusion

Your Lordship, the inmate is a young man still in his formative years, demonstrating significant potential for positive change. He has acknowledged responsibility for his actions and expresses genuine remorse for the offence. During the seven months he has spent in custody, he reports having reflected deeply on his conduct and gained valuable insight into the consequences of his behavior. He attributes the incident to poor decision-making influenced by excessive alcohol use, which he now firmly commits to abstaining from.

While the home environment has previously been unstable, the renewed engagement of his father who has expressed willingness to support and guide him creates a viable foundation for reintegration. This emerging support system, combined with his demonstrated remorse, improved attitude, and readiness to reform, suggests a favourable prognosis for rehabilitation within the community.



In view of these factors, there is a strong indication that the inmate would benefit more from structured supervision and rehabilitative interventions under a non-custodial sentence rather than continued incarceration.

Recommendation

The inmate may be considered to serve probation Order for the remaining period of 9 months 2 Weeks. Our office will initiate rehabilitation inventions to ensure his behavior change and a positive life in community.

DIVISION - Decision

5. 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.
6. The guiding principles on review of sentence post-conviction is well articulated by the Court of Appeal in Bernard Gacheru Vs 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.”
7. 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”
8. 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 Vs 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.
9. The role of non-custodial sentence should underpin our penal system in which custodial sentence remains a recourse of last resort in punishing offenders. The sentence policy guidelines of the judiciary



2023 provides a framework in which Judicial discretion should be exercised to arrive at a fair and proportionate sentence on individualized circumstances. The objectives and principles of sentencing are well articulated and defined as follows:

- a. Retribution: to punish the offender for his/her criminal conduct in a just manner.
 - b. Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
 - c. Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law-abiding person.
 - d. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.
 - e. Community protection: to protect the community by incapacitating the offender.
 - f. Denunciation: to communicate the community's condemnation of the criminal conduct.
 - g. Reconciliation: To mend the relationship between the offender, the victim and the community.
 - h. Reintegration: To facilitate the re-entry of the offender into the society.
10. Sentencing is a discretionary process mainly exercised by trial courts who have the advantage to appreciate the circumstances of the offence and how it applies to the sentencing objectives and principles within the regulatory framework of our sentencing policy guideline 2023. This court is being asked to review the custodial sentence and have it substituted with non-custodial sentence. As I appreciate the record and the impugned decision on sentence I bear in mind that this is one area of law which involves the weighing of many complex factors, it will always be possible to point to some factors which should arguably have been taken into account or left out of account; even if they should have been, the court should not intervene unless it is convinced that this would have resulted in the decision going the other way.
11. One of the most fundamentals of sentencing is proportionality meaning that elements on the gravity of the offence and moral blameworthiness of the offender carries more weight in a trial court figuring out the final verdict to be imposed. The more serious the crime and its consequences the heavier the sentence would be meted out. The doctrine of proportionality in sentencing demands that punishment or sanctions so passed speaks out loudly against the offence and the conduct of the accused person. The court in *R v Morrissette*, 1970 CanLII 642, 1 CCC (2d) 307 at Para 10 (Sask CA); *R v BO2*, 2010 NLCA 19 at para 51 held as follows:
- In my view, the public can be best protected by the imposition of sentences that punish the offender for the offence committed, that may deter him and others from committing such an offence and that may assist in his reformation and rehabilitation. If the offender is one for whom reformation is beyond question, then the public can be protected only by depriving him of his freedom. In the case of other offenders, and particularly young offenders, the principal element or consideration, consonant with the maintenance of public confidence in the effective enforcement of the criminal law, should be the offenders' reformation and rehabilitation.
12. There is a big outcry amongst our communities and society at large on the level of inconsistency, disparity, unfairness, and disproportionate verdicts on sentence being imposed by the trial courts and on even on appeal which do not reflect the sentencing objectives and principles in our policy document.



As if that is not enough the letter and spirit of our sentencing scheme seems to depart from the legislatures intention and vision in the criminal administration of justice. Sentencing in Kenya ought to be fair and proportionate to the crime being prosecuted by the state as against the accused persons or defendant. These canons on fair and proportionate sentence requires that:

- a. All relevant factors of a case must be considered including the seriousness of the offence, the impact on the victim and others affected by the case, and the circumstances of the offender;
 - b. Sentences should be no more severe than is necessary to achieve the appropriate purposes of sentencing in each case;
 - c. Reasons for sentencing decisions must be stated as clearly and openly as circumstances permit;
- SUBPARA d.
Sentencing decisions must be made lawfully and sentencers must have regard to any sentencing guidelines which are applicable;
- e. People should be treated equally, without discrimination; and
 - f. Sentencing decisions should treat similar cases in a similar way, assisting consistency and predictability

13. For those reasons I place the applicant on a Probation Order for the remaining period of 9 months 2 weeks at the Area Chief. The release order be issued to remove the applicant from prison custody to the Director Probation and Aftercare Services to supervise the next stage of the sentence. Orders accordingly.

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

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R. NYAKUNDI

JUDGE

