

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CRIMINAL REVISION NO. E316 OF 2025

TIMOTHY SEDIAPPLICANT

VERSUS

REPUBLIC.....RESPONDENT

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

RULING

1. The Applicant was charged with stealing contrary to Section 268 as read with Section 275 of the Penal Code. The brief facts of the particulars are that on 22nd day of May 2024 at around 0500 hrs at Rexona area, Langas estate in Kapseret Sub County within Uasin Gishu County, with others not before Court stole a metallic kiosk valued at Ksh 35,000/= the property of Loviance Achieng. The applicant was tried and found guilty, convicted and sentenced to a fine of Ksh 30,000/= in default to serve 12 months imprisonment on 24 June 2025.
2. The Applicant has approached this Court vide a sentence review report from the Probation office stating as follows;

D. CURRENT HOME AND PERSONAL CIRCUMSTANCES

The inmate is the second born child of the ten siblings born to Joseph Barasa and Martha Kakai family. The family are natives of Kakamega county, but they reside at Langas village-Uasin Gishu. The inmate is a class 8 dropout. At the time of his arrest, he was working as a casual laborer at Langas where the offence was committed. The inmate has been in contact with his parents. They are ready to receive him back home and help in his rehabilitation process in the open society.

E. PRISON ASSESSMENT, REHABILITATION AND RE-INTEGRATION

The inmate has gained horticulture and general farming skills which he endeavors to utilize upon his release for his economic empowerment. He has also been attending guiding and counselling session for character transformation and respect to the rule of law.

F. OFFENDER'S ATTITUDE TOWARDS NON-CUSTODIAL MEASURES

The inmate pleads for courts leniency. He regrets committing the offence and has promised to be law abiding citizen. He takes full responsibility of the offence committed he is willing to serve non-custodial sentence.

G. RECOMMENDATION

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. The family is willing to receive him back home. We therefore recommend that, the inmate be placed on a community service order and perform at Langas primary school for a period of 1 month, under the supervision of the Head teacher. This is subject to Courts discretion

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 reviewing the custodial sentence to have it substituted with non-custodial for the remainder of the period of one (1) month to be placed under C.S.O at the Langas Primary School under the supervision of the Head teacher. It is therefore necessary that the

Applicant be removed from Prison custody for C.S.O in support of the social integration within his home-based environment. It is so ordered.

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

.....

**R. NYAKUNDI
JUDGE**