REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL REVISION NO. E298 OF 2025

NICHOLAS KIPLIMO TANUI ………………………………………… APPLICANT

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(1) as read with Section 275 of the Penal Code. The brief facts of the particulars are that on the 14th day of August 2025, at around 0200hrs, at Kerita village in Kesses Sub-County within Uasin Gishu County stole ten (10) chickens worth Ksh 10,000/= the property of one Rebecca Malosoi. The Applicant was convicted on own plea of guilty and was sentenced to a fine of Ksh 50,000 in default to serve 6 months imprisonment on 22 September 2025.
2. The Applicant has approached this Court vide an application for review of sentence under Section 362 as read with Section 364 of the CPC.
3. As a consequence of that the Probation Officer filed a presentence review report which had the following components:

D. CURRENT HOME AND PERSONAL CIRCUMSTANCES

My Lord, the inmate is the son of William Tanui and Salina Tanui of Chetiret in Ainabkoi sub-county within Uasin Gishu county. The inmate is the 6th born in a family of 11 children. The family is closely knit and have no other county. Before his arrest, he worked as a casual worker in his village and also did regular farm jobs in where he dropped out of for three due to what he says lack of school fees. He is not yet married but plans to settle down after release from prison.

E. PRISON ASSESSMENT, REHABILITATION AND RE-INTEGRATION:

Your Lordship, the inmate was carrying out farm work during his stay in prison. Prison authorities have nothing negative about him. The complainant is a neighbor and has forgiven the inmate and has no objection to his early release. The inmate's family is looking forward to a reunion. They are eagerly waiting for his release.

E. OFFENDER'S ATTITUDE TOWARDS NON-CUSTODIAL MEASURES

My Lordship, the inmate is positively responsive to early release. He is ready to spent the rest of his remaining term out on a non-custodial sentence. He is also willing to practice what he learned in prison the community. His parents have allocated him a piece of land for his resettlement and use.

F. RECOMMENDATIONS

Your Lordship, with regards to the above information, the inmate is recommended to serve Community Service Order for a period of 2 months.

Decision

4. 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.
5. 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."

6. 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"*

7. 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.

8. I have considered the application for revision of sentence under Section 362 as read with Section 364 of the Criminal procedure Code and construed with Article 50(2) (p) & (q) of the Constitution together with Article 25(a) of the same Constitution to review the custodial sentence and have it substituted with non-custodial on C.S.O for a period of two months at Kerita Primary School. It is so ordered.

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

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R. NYAKUNDI

JUDGE