



**Kite v Republic (Criminal Revision E284 of 2025)  
[2025] KEHC 17607 (KLR) (25 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17607 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E284 OF 2025  
RN NYAKUNDI, J  
NOVEMBER 25, 2025**

**BETWEEN**

**SYLVESTER KITE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant was charged with stealing contrary to Section 275 of the Penal Code. The brief facts of the particulars are that on the 1<sup>st</sup> day of May 2025 in Kimumu Location, Moiben Sub-County within Uasin Gishu County, stole Pure Steel Metal valued at Ksh 200,000/= the property of Phylis Jelimo. He pleaded not guilty to the offence and the case proceeded for full trial. The Applicant was found guilty, convicted and sentenced to serve 1 year imprisonment on 14 August 2025.

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

C. Current Home And Personal Circumstances

The inmate is the Fourth born child in a family of nine siblings born to Cosmas Kite Yego and Pauline Kite. The family are natives of Elgeyo Marakwet county, but they reside at Kimumu village-Uasin Gishu County. The inmate is a class 8 dropout. At the time of his arrest, he was working as a casual laborer at Hawaii where the offence was committed. The inmate has been in contact with his siblings and in most cases he has been visited severally. They are ready to receive him back home and help in his rehabilitation process in the open society.

D. 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. As per the prison



authorities; he has maintained a positive attitude. He also has skills in painting and he will utilize the same to earn a living positively.

E. Offender's Attitude Towards Non-custodial Measures

The inmate pleads with this honorable court to be granted a non- custodial sentence for the remaining period of his sentence. 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.

F. Recommendation

Your Lordship, since his incarceration, the inmate has shown remorse for his actions and has sought opportunities for personal growth and self-improvement. He acknowledges the inappropriateness of his action and has expressed a sincere commitment to learning from this experience. His parents have voiced his support for him and are willing to assist him continue with his rehabilitation if considered for an early release. He has a family that depends on him and he is eager to return and resume his life.

Your Lordship, considering the above facts and findings we therefore recommend that, the inmate be placed on a community service order and perform un-paid work at Kimumu Primary School for a period of 20 days, under the supervision of the Head Teacher. This recommendation 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. I have reviewed the record and the application. It is clear that the Applicant is remaining with 20 days of his custodial sentence of one year imprisonment. I am of the considered view that the sentence be reviewed to the period already served. He is therefore free indeed to be released from custody to join his family for Christmas. It so ordered.

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

.....

**R. NYAKUNDI**

**JUDGE**

