



**Chesame v Republic (Criminal Revision E300 of 2025)  
[2025] KEHC 17930 (KLR) (3 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 17930 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E300 OF 2025  
RN NYAKUNDI, J  
DECEMBER 3, 2025**

**BETWEEN**

**FRED CHESAME ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged of burglary contrary to section 304(2) and stealing contrary to Section 279(b) of the penal code. The brief facts are on the 2<sup>nd</sup> day of July 2024, at around 1900hrs at Murgusi village, Ngenyilel location in Turbo Sub County within Uasin Gishu County, broke and entered the dwelling house of Rose Makanisa with intent to steal therein and did steal from therein one solar battery, 7kgs of sugar, 10litres of cooking oil and one sewing machine make butterfly the property of the said Rose Makanisa all valued at Kshs. 15,660/=
2. The Applicant pleaded guilty and was sentenced to a fine of Kshs. 20,000/= in default 9 months' imprisonment on 4<sup>th</sup> July 2025.
3. The applicant has approached this court pursuant to sections 357,362,364& 382 of the Criminal Procedure Code as construed with Article 50(2) (p) & (q) as conjunctively read with Article 50(6)(a) &(b) of *the Constitution*.
4. 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.
5. The *Community Service Orders Act* empowers this Court to order an offender to perform unpaid community service in lieu of imprisonment. This sentencing option is available where the offence carries a maximum term of imprisonment not exceeding three years, or where the Court deems it appropriate that any portion of a longer sentence be served through community-based sanctions. The Act recognizes that certain offenders benefit more from structured rehabilitation within the community than from continued incarceration, particularly where there exist genuine prospects for reformation and successful reintegration into society. In the present case, the Applicant was sentenced to pay a fine of Kshs. 20,000/= or in default serve nine (9) months' imprisonment. Having failed to pay the fine, he has been serving the custodial sentence since 4<sup>th</sup> July 2025, which is approximately five (5) months to date.
6. Having carefully considered the circumstances of this case and the time already served by the Applicant, I am satisfied that the custodial sentence has achieved its intended purpose. Taking into account the statutory remission of one-third (1/3) that ordinarily applies to his nine (9) months' default imprisonment term, the Applicant's effective sentence would be six (6) months. He has already served five (5) months in custody, which represents a substantial portion of his effective sentence. During this period of incarceration, I am persuaded that the Applicant has had adequate opportunity to reflect upon his actions, appreciate the gravity of his offences, and learn from this experience. The Applicant pleaded guilty at the earliest opportunity, demonstrating remorse and acceptance of responsibility for his conduct. Considering that he is a first offender and that continued incarceration would serve no further rehabilitative or punitive purpose, I find that the ends of justice have been adequately met. Accordingly, the Applicant is hereby ordered to be released forthwith, unless otherwise lawfully held. He is strongly cautioned and admonished to desist from any further criminal conduct and to remain a law-abiding member of society. Should he reoffend, the courts will not hesitate to impose the full force of the law.
7. It is so ordered.

**SIGNED, DATE AND DELIVERED AT NOVEMBER THIS 3<sup>RD</sup> DAY OF DECEMBER, 2025.**

.....

**R. NYAKUNDI**

**JUDGE**

