



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Kibet v Republic (Criminal Revision E354 of 2025)  
[2025] KEHC 17938 (KLR) (3 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 17938 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E354 OF 2025  
RN NYAKUNDI, J  
DECEMBER 3, 2025**

**BETWEEN**

**NICHOLAS KIBET ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant was charged with Malicious damage to property contrary to Section 339(1) of the Penal Code. The brief particulars of the offence are that on the 18<sup>th</sup> day of June 2025 Kimumu location, Moiben Sub County within Uasin Gishu County willfully and unlawfully damaged Vitron TV 32 Inch, fridge, water dispenser and C-stand all valued at 79,800/= the property of Glaudencia Sigilai.
2. The Applicant was convicted on own plea of guilty and was sentenced to pay a fine of Kshs 60,000/= in default to serve 12 months imprisonment in Count I and in Count II to pay a fine Kshs 50,000/= in default serve 12 months imprisonment on 19<sup>th</sup> June 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.

**Decision**

4. The Superior Courts have delved into the issue of sentencing which is one of the core functions of trial Courts within our Criminal justice system. In the Fatuma Hassan Salo v Republic [2006] eKLR Makhandia J as he then was remarked; Thus, the court should be guided by evidence and sound legal principles when it comes to the arrival of its decision. He also stated that the court should put into consideration all the relevant factors and exclude the irrelevant factors. In addition, the Court in Peter M. Kariuki v Attorney General, [2016] eKLR also made the following observations; That a Court has been granted discretion in a manner that is both judicial and reasonable – not upon caprice or personal



opinion. This has been emphasized in the judgments of other cases to be useful to the appeal court when analyzing the judgment of a Lower Court.

5. The Sentencing Guidelines of 2023 provide a foundation and a reference point for Judges and Magistrates in exercising discretion. The Policy Guidelines provides for a three-step approach that is to be applied by a trial Court in individualizing specific sentences befitting specific offences.
  - a. Sentencing options – The Court is meant to consider the sentencing options that are provided for by the statute where the crime falls under. This means a reference to the statute that provides for the crime in question.
  - b. Custodial v non-custodial – For the statutes that provide for both custodial and non-custodial options, the guidelines give principles that are to be considered in analyzing which of these two orders would be the most appropriate.
  - c. The third step is twofold, the choice that is to be considered depends on which option was made in step 3.
    - i. For a non-custodial sentence, the guidelines have also provided a policy through which the Courts discretion is to be applied in choosing the most appropriate non-custodial sentence and eventually mitigation and aggravating circumstances are expected to be put into consideration
    - ii. For imprisonment, the same applies, that the guidelines have provided for a policy to be used in determining how long the term of imprisonment should be after the consideration of aggravating and mitigating circumstances.
6. A proper recrafted legal framework is needed to meet the challenging task of appropriate sentencing given the disparities on the various sanctions of what one considers to be the same offence with the prescribed sentence by the Legislature.
7. Having been in this space as a legal professional involved in adjudication of cases within the scope of criminal law, I am of the view that there is an urgent need to carefully study other theories or objectives of sentencing when it comes to punishment in order to determine which ones are acceptable as justifications for punishing the various wrongdoers in specific offences. It serves no purpose to put emphasis on deterrence and abandon the rehabilitative principle or objective if it is thoughtlessly just replaced without very clear guidelines or reasons. There are those who maintain that every different punitive measure taken by the various Courts can be satisfied by a single sentencing scheme, but practically it is difficult to accomplish transformative justice on sentencing by placing emphasis on just one objective. The Courts in Kenya tend to hinge more towards deterrence of an offender than rehabilitation. The common philosophical justifications for the institutional punishments include the following:
  - a. Retribution – punishment is justified merely because the offender has committed a wrong.
  - b. Deterrence – punishment is justified in order to clear the offender from committing further crimes in the future and to deter other members of society in general.
  - c. Rehabilitation – the offender needs to be rehabilitated so that he will behave in a socially acceptable manner.



- d. Incapacitation – justifies the incarceration of the offender for the protection of society.
  - e. Condemnation – the infliction of punishment upon the guilty person is the symbolic condemnation by society of the individual.
8. The Maximum Prisons facilities in Kenya were designed to hold fewer people than they do at the moment. Apparently, the correctional facilities do not have adequate infrastructure to hold the additional population of inmates hence there is an urgent need to revisit the issue of sentencing regime in Kenya to avoid a catastrophe so that petty offenders should be a subject of non-custodial sentences. It is trite that under the rehabilitative theory judicial discretion has been quite abroad, based on the idea that the punishment should fit the criminal and not the crime. Sentencing should be “individualized” depending upon such factors as the particular circumstances of the crime, the prisoner’s previous criminal record, and the chances that another crime will be committed. Consequently, the Judge or Magistrate must have a great deal of discretion in order to treat offenders on a more individual basis.
9. Another way of looking at this case is on the applicable factors drawn from aggravating and mitigating circumstances. In reviewing sentence under section 362 and 364 of the CPC one has to consider the worthiness factor. Is this convict a career criminal who really poses a danger to society? Or is he or she someone who has been swept up by the technicalities of statutorily mandated prison sentences? If the latter, then the convict is more worthy to receive the inherently discretionary review involve in proportionality analysis.
10. Given the weight of the issues interlocking the statutory framework on sentencing this malicious act using the test of proportionality and the principles in *Benard Gacheru v Republic* [2002] the offence was more serious and the convict should have received a greater punishment. As a consequence, on review of sentence is dismissed under Section 382 of the Criminal Procedure Code. It is so ordered.

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 3<sup>RD</sup> DAY OF DECEMBER, 2025**

.....

**R. NYAKUNDI**

**JUDGE**

