

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION NO. E364 OF 2025

MOSES KIPRUTO
APPLICANT

VERSUS

REPUBLIC..... **RESPONDENT**

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

RULING

- 1.** The applicant was charged of stealing stock contrary to Section 278 of the penal code. The brief facts are on the 24th and 25th day of July 2024, at Tulwopngetuny village Chebaywa location in Kesses Sub County within Uasin Gishu County, together with others not before court stole two cows (Ayrshire and freshian) all valued at Kshs. 120,000/= the property of William Kipchoge Tarus.
- 2.** The Applicant pleaded guilty and was sentenced to serve 2 years' imprisonment on 2nd April 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.** The applicant seeks a sentence review praying for a lesser sentence. He prayed that the court be lenient and consider a non-custodial sentence.
- 5.** 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.

6. Having considered the nature of the offence, the circumstances of the case, and the applicant's personal circumstances, I note several significant mitigating factors that warrant sentence review. First, the applicant pleaded guilty at the earliest opportunity, demonstrating genuine remorse and saving the court's time and resources. Second, and most importantly, the stolen stock comprising two cows (Ayrshire and Friesian) valued at Kshs. 120,000/= were recovered and restored to the complainant, William Kipchoge Tarus, who therefore suffered no permanent loss. Third, the applicant has already served a substantial portion of his sentence, having been incarcerated since 2nd April 2025, which is approximately eight (8) months to date. During this period of incarceration, I am persuaded that the applicant has had sufficient time to reflect upon his actions, appreciate the gravity of stock theft, and learn from this experience. Taking into account the statutory remission of one-third (1/3) that ordinarily applies, the applicant's effective sentence would be sixteen (16) months, of which he has already served half.
7. In the circumstances, and considering that the stolen property was fully recovered, that the applicant is a first offender who has demonstrated remorse, and that he has already served a considerable portion of his

sentence, I find it appropriate to suspend the remainder of the sentence. Accordingly, the balance of the applicant's sentence is hereby suspended on the condition that he remains of good behavior and does not commit any offence within the next two (2) years from the date of his release. The applicant is hereby ordered to be released forthwith, unless otherwise lawfully held. However, he is sternly warned and cautioned that should he reoffend or be convicted of any criminal offence during the suspension period, he shall be liable to be brought back to serve the balance of this sentence to completion in addition to any sentence imposed for the subsequent offence. The applicant is strongly admonished to desist from any further criminal conduct and to remain a law-abiding member of society.

8. Orders accordingly.

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

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**R. NYAKUNDI
JUDGE**

