

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ELDORET**  
**CRIMINAL REVISION NO. E282 OF 2025**

**KELVIN KOGO.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

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

**RULING**

- 1.** The applicant was charged of stealing contrary to Section 268 as read with Section 278 of the penal code. The brief facts are on the 5<sup>th</sup> day of June 2025, at unknown time at Teleview estate in Kapseret Sub County within Uasin Gishu County, stole two 3 by 6 maroon mattress valued Kshs. 9600/=, one 4 by 6 maroon valued Kshs. 6,000/=, one BMX size bicycle valued Kshs. 15,000/= and one size 26 special bicycle valued Kshs. 16,000/= all valued Kshs. 41,000/= the property of the property of Geoffrey Kimutai.
- 2.** The Applicant pleaded guilty and was sentenced to a fine of Kshs. 40,000/= in default 12 months' imprisonment on 20<sup>th</sup> June 2025.
- 3.** The applicant seeks a sentence review. He prays that he may be allowed to serve a non-custodial sentence. 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."

**4.** I have considered the offence in question and the aggravating factors. The sentencing objectives in Kenya have been captured in the Sentencing guidelines 2023 to be the following: -

- i. *"Retribution: to punish the offender for his/her criminal conduct in a just manner.*
- ii. *Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.*
- iii. *Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law-abiding person.*
- iv. *Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.*
- v. *Community protection: to protect the community by incapacitating the offender.*
- vi. *Denunciation: to communicate the community's condemnation of the criminal conduct.*
- vii. *Reconciliation: To mend the relationship between the offender, the victim and the community.*
- viii. *Reintegration: To facilitate the re-entry of the offender into the society.*

**5.** From the foregoing it is pertinent for this court to wholesomely consider the objectives of sentencing vis-a-vis the offence in question. The ends of

justice can be met not only through a custodial sentence but also through rehabilitative measures available under non-custodial sentence with proper guidance and counselling.

6. The court is therefore persuaded that in the circumstances, the applicant ought to benefit from a non-custodial sentence given that he is a suitable candidate for rehabilitation and reintegration.
7. From the above analysis and in considering the circumstances of the case, I am of the considered opinion that the applicant ought to benefit from a non-custodial sentence given that he is a suitable candidate for rehabilitation and reintegration. The applicant is hereby placed under Probation for the remaining period of his sentence. It is therefore necessary that during the probationary period, monthly reports be filed in court by the probation officer to capture progress in rehabilitation and the elements of restorative justice in this case.
8. Orders accordingly.

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

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**R. NYAKUNDI  
JUDGE**