



REPUBLIC OF KENYA



**Kariuki v Republic (Criminal Revision E288 of 2025)
[2025] KEHC 17693 (KLR) (1 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 17693 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E288 OF 2025
RN NYAKUNDI, J
DECEMBER 1, 2025**

BETWEEN

DAVID KARIUKI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged of stealing contrary to section 268(1) as read with section 275 of the penal code. The brief facts are on the 22nd day of September 2025, at around 0100hrs at West Hendi guest house, Langas estate in Kapseret Sub County within Uasin Gishu County with others not before court stole one television set, one mobile phone of make Tecno button, one iron box, one crate of soda (300) ml, ten bottles of 500ml soda, twelve glasses, assorted kitchen utensils, 2kg of sugar, ten plastic chairs, one glass table and three CCTV cameras all valued at Kshs. 52420/= the property of Robert Luyayi. He pleaded guilty to the offence convicted and sentenced to a fine of Kshs. 100,000 in default 13 months' imprisonment.
2. The Applicant has approached this Court vide an application for review of sentence under Section 362 as read with Section 364 of the CPC.
3. As a consequence of that the Probation Officer filed a presentence review report which had the following components:

Current Home And Personal Circumstances:

The inmate is 32 years old. He comes from Pioneer location in Kapseret sub-county. He is the son of the late Patrick Situma and one Mary Nyagothie. He is the 1st born in a family of four siblings. The inmate attended Langas primary school and dropped in class 6 in his own volition. He later ventured into casual labour and selling of second-hand clothes with his mother in Eldoret City. The inmate is married to Sharon Mbone and together sired



one child. He is the sole breadwinner. He comes from a cohesive family but the family is concerned with his drinking behavior, which they believe is linked to the commission of the offence.

Prison Assessment, Rehabilitation, And Re-integration:

The inmate is involved in farming at the prison. The prison records indicate that the inmate is fit for release. The family and community are willing to be part of rehabilitation. The inmate's family indicated the inmate is welcome home and are willing to assist him continue with his small business. They hope the inmate will change and stop his drinking behavior and more so respect people's property. The efforts to reach the complainant was unsuccessful.

Offenders Attitude Towards Non-custodial Measures

The inmate is remorseful and takes responsibility for his offence. The inmate is ready to serve the community if the court considers him for a non-custodial sentence.

Recommendations:

My Lord, the inmate can be considered for a non-custodial sentence and placed on Probation Order for 7 months this is subject to this court's discretion.

Decision

3. The Post-Conviction Sentence Report is moderate along the categories of restorative justice than retributive or deterrent objectives of sentencing. It is often said that restorative justice is a way of seeing a crime as entrenched in building relationships and transforming the offender to be a law-abiding citizen.
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. I have also concerns about the Presentence Reports particularly during the decongestion programs authorized across the country at any one given time. First, what is known as a presentence report contains criteria which often facilitate disparity in sentencing. A presentence report, written after a background investigation of the offender has been made, is supposed to aid the sentencing Judge or Magistrate in making a proper decision. Unfortunately, such a report is difficult to compile and



time-consuming. Consequently, the Judge or Magistrate does not necessarily get a truly accurate picture of the convict's background and personality. But, even assuming a perfectly accurate report, the criteria upon which the Judge evaluates the offender unintentionally, but inevitably, provide for discriminatory treatment against certain social classes. (See Golden Gate University Law Review Vol. 11, Iss. 2 [1981], Art. 3).

10. This case has been reviewed in accordance with the provisions of the CPC under Section 362 as read with 364 together with Article 27, Art. 50 (2) (p) (q) and Sub Section (6) (a) & (b) of the Constitution for the Applicant to benefit with non-custodial sentence of seven (7) months to be served on probation. The Probation Officer shall file quarterly reports with the Deputy Registrar of the High Court on compliance with the sentence and at the end of it all to close the file. Orders accordingly.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 1ST DAY OF DECEMBER 2025

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R. NYAKUNDI

JUDGE

