



REPUBLIC OF KENYA



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

**Kerongo v Republic (Criminal Revision E302 of 2025)
[2025] KEHC 17687 (KLR) (1 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 17687 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E302 OF 2025
RN NYAKUNDI, J
DECEMBER 1, 2025**

BETWEEN

JOSHUA KERONGO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged with Stealing contrary to Section 268(1) as read with Section 275 of the Penal Code. The brief facts of the particulars of the offence are that on the 23rd day of June 2025 at Mwanzo area, Langas estate in Kapseret Sub County within Uasin Gishu County, stole one mobile phone of make Samsung A15 valued at Ksh 24,000/= the property of Marvin Kipkoskei.
2. The Applicant was found guilty was to pay a fine of Ksh 30,000/= in default to serve 12 months' imprisonment on 30th September 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.
4. As a consequence of that the Probation Officer filed a presentence review report which had the following components:

A. Current Home And Personal Circumstances:

The inmate is 21 years old sentenced for a period of 12 months for settling. He comes from Uasin Gishu county, and resides in Pioneer location in Kapseret Sub- County within Uasin Gishu County. The inmate is the first born to one Boniface Naringo and one Cecilia Masese. He attended Kapkenduuywo primary and dropped in class 8. He did not continue with his studies because of financial challenges. He could later engage in casual activities sector to earn a living. The family members stated



that the inmate is hardworking and responsible. The inmate said he was in good health, and he does not abuse drugs. The inmate is single with no dependent. The local administration is not against the inmate early release. There was no criminal history.

B. Prison Assessment, Rehabilitation, And Re-integration:

The inmate is involved in farming at the prison. Having been in prison he states that he has changed and asked for forgiveness from the complainant who was his friend. The prison records indicate that the inmate is fit for release. The local administrators not against the inmate serving his remaining sentence in the community. The family and community are willing to be part of rehabilitation. Inmates sister and mother indicated the inmate is welcome home and are willing to assist him secure a job.

C. Offenders Attitude Towards Non-custodial Measures

The inmate is remorseful and takes responsibility for his offense. He believes the period he has served in prison has helped him change his behavior and had an opportunity to ask for forgiveness from the complainant. The inmate is ready to serve the community if the court considers him for a non-custodial sentence.

D. Recommendations:

My Lord, the inmate can be considered for a non-custodial sentence and placed on Probation for a period of six months.

Decision

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 misdemeanor.
 - 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. 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 exists a strong support system and genuine prospects for reformation.
7. 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.

8. 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.
9. 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.
10. I have reviewed the record, the guiding principles in our Sentencing Policy Guidelines, the caselaw developed over time on sentencing and the provisions of Section 362 of the CPC as read with Article 50(2) (p) (q) and Sub Section 6(a) & (b) of *the Constitution* and I find merit for this Court to exercise discretion to review the custodial sentence and have it substituted with the non-custodial sentence of six months on probation. With this order the Applicant/convict shall be removed from Prison custody and handed over to the Directorate of Probation and After Care Services who shall execute the non-custodial sentence. It is so ordered.

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

.....

R. NYAKUNDI
JUDGE

