



**Kotia v Republic (Criminal Revision E350 of 2025)
[2025] KEHC 17684 (KLR) (1 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 17684 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E350 OF 2025
RN NYAKUNDI, J
DECEMBER 1, 2025**

BETWEEN

MOSES KOTIA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged with preparation to commit a felony contrary to Section 308(1) of the Penal Code. The brief facts of the particulars are that on the 8/9/2024 at around 00:55hrs at Action Berlin Estate in Kimumu Location, Moiben Sub County within Uasin Gishu County were armed with offensive weapons namely nut cutter and Panga in circumstances that indicated that you were so armed with intent to commit a felony namely burglary.
2. The Applicant was found guilty was sentenced to serve 3 years' imprisonment effective the day he was charged in court i.e. 13/09/2024 on 18th 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. Introduction And Sources Of Information

This is a sentence review report concerning Moses Kotia who was sentenced to three years in prison for the offence of Preparation to commit a felony c/sec 306 of the penal code. The report is based on findings from social inquiry interviews and a general assessment aimed at determining the inmate's suitability for serving the remainder of his sentence under a non-custodial arrangement. Interviews were conducted with the inmate at Eldoret GK Prison,



his family members, and the local area administration. Additionally, the lower court file was reviewed.

B. Current Home And Personal Circumstances

The inmate is the third-born in a family of three children, born to Isaiah Kotia and Milka Ndonga who are both deceased. His siblings are Samwell Ong'ayo a casual laborer and Daniel Opondo who is a bodaboda rider. The inmate does not have dependents and was a casual laborer at Munyaka market prior to his arrest. He admits to have been an alcoholic. The family comes from a low socio-economic background. They have expressed their willingness to support the inmate and have requested that he be considered for a non-custodial sentence.

C. Prison Rehabilitation

The inmate is involved in farming at the prison. Prison records indicate that the inmate is fit for release. The local administrators are not against the inmate serving his remaining sentence in the community. The family and community are willing to be part of his rehabilitation.

D. Offenders' Attitude And Impact Of Imprisonment

The inmate has expressed regret for his actions. He recognizes that being imprisoned has had a significant impact on him and that he has learned the importance of respecting other people property.

E. Conclusion

Your Lordship, in light of the inmate's relatively young age, the progress made toward serving his custodial sentence, and his clear expression of remorse, there is a strong indication of his potential for rehabilitation. Furthermore, the presence of a supportive home environment provides a conducive foundation for successful reintegration through community-based correctional measures.

F. Recommendation

The inmate may be considered to serve Probation Orders for the remaining period of 10 months.

5. 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.
6. 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.
7. 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. Taking into account the relevant factors as stipulated in the Sentencing Policy Guidelines, the circumstances of the offence in which the Applicant/convict was sentenced to herein one Moses Kotia and my appreciation of the Social Inquiry Report I review the custodial sentence and have it substituted with a non-custodial of ten (10) months on probation. The Officer in Charge Prisons therefore be and is hereby commanded to remove the Applicant from Prison custody and hand him over to the Director of Probation and After Care Services to commence the above sentence without delay. Orders accordingly.

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

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R. NYAKUNDI

JUDGE

