



REPUBLIC OF KENYA



**Muriuki & 2 others v Republic (Criminal Revision E311 of 2025)  
[2025] KEHC 17982 (KLR) (3 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 17982 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E311 OF 2025  
RN NYAKUNDI, J  
DECEMBER 3, 2025**

**BETWEEN**

**STEPHEN MWANGI MURIUKI ..... 1<sup>ST</sup> APPLICANT**

**JACKSON MWANGI NYAGA ..... 2<sup>ND</sup> APPLICANT**

**SAMSON GITHAE MUGO ..... 3<sup>RD</sup> APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicants were charged with stealing contrary to Section 268(1) as read with Section 275 of the Penal Code. The brief particulars of the offence are that on the 6<sup>th</sup> day of September 2025 at around 0230hrs a Kona Mbaya area Langas estate in Kapseret Sub County within Uasin Gishu county jointly stole four tent metal rods valued at Ksh 10,000/= the property of Boniface Mwangi.
2. The Applicant was convicted on plea of own plea of guilty and was sentenced to a fine of Kshs 10,000/= in default to serve 2 months imprisonment on 1<sup>st</sup> October 2025.

**Decision**

3. 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.
4. 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.
  5. 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.
  6. 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 come 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.
7. 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.
8. The record of the trial court has been reviewed on both conviction and sentence the offence as it was were carries a more serious sentence but the mind of the trial court each of them went away with a custodial sentence of two months in default of nonpayment of fine of Kshs 10,000. In addition, the record also reveals that the impugned order by the learned trial Magistrate was made of 1<sup>st</sup> October 2025 and a simple mathematics being explored demonstrates that the period has expired as at the time this file was brought to my attention. What that means, the subject matter is lost and the best thing to do by codification of the law is to dismiss the motion under Section 382 of the Criminal Procedure Code. If indeed the convicts are still in custody they shall be set free and free indeed by carrying their prison mattresses by walking through the correctional gated facilities to join their families for the upcoming Christmas holidays to tell their story and experience to their families and lessons learned during incarceration. Orders accordingly.

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 3RD DAY OF  
DECEMBER, 2025**

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**R. NYAKUNDI  
JUDGE**

