



REPUBLIC OF KENYA



KENYA LAW
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**Ngaira v Republic (Criminal Revision E305 of 2025)
[2025] KEHC 17931 (KLR) (3 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 17931 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E305 OF 2025
RN NYAKUNDI, J
DECEMBER 3, 2025**

BETWEEN

JACKSON NGAIRA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged of house breaking contrary to Section 304(1)(b) and stealing contrary to section 279(b) of the penal code. The brief facts are on the 8th day of July 2025, at around 0800hrs at Chemnego village at Kamagut location in Turbo Sub County within Uasin Gishu County, broke and entered the building used as a dwelling house by Rose Rono and stole one 6kg power gas, two sunking lamps, two solar panel and two gogoro of potatoes valued at Kshs. 11,100/= the property of Rose Rono.
2. The Applicant pleaded guilty and was sentenced to a fine of Kshs. 40,000/= in default 6 months' imprisonment on 23rd September 2025. In the pre-sentence report that was filed before the trial court dated 23rd September, 2025, the Probation Officer recommended that the applicant was not suitable for a non-custodial sentence.
3. The applicant has approached this court pursuant to sections 357,362,364& 382 of the Criminal Procedure Code as construed with Article 50(2) (p) & (q) as conjunctively read with Article 50(6)(a) &(b) of *the Constitution*.
4. The applicant seeks a sentence review praying for a lesser sentence. He prayed that the court be lenient and consider a non-custodial sentence.
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 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.
6. Having considered the nature of the offence, the circumstances of the case, and the applicant's personal circumstances, I note the following mitigating factors: First, the applicant pleaded guilty at the earliest opportunity, demonstrating remorse and saving judicial time. Second, and significantly, all the stolen items valued at Kshs. 11,100/= were recovered, meaning the complainant suffered no permanent loss. Third, the applicant has already served a substantial portion of his sentence, having been incarcerated since 23rd September 2025. During this period of approximately two and a half months, I am satisfied that he has had adequate time to reflect upon his actions and learn from this experience. Further, taking into account the statutory remission of one-third (1/3) that would ordinarily apply to his sentence, the applicant would effectively serve four (4) months of the six (6) months' imprisonment term, with his scheduled release date being in late January 2026. However, considering that he has already served a considerable portion of this effective sentence, that the stolen property was fully recovered, and that continued incarceration would serve no further rehabilitative or punitive purpose, I find that the ends of justice have been adequately met. Accordingly, the applicant is hereby ordered to be released forthwith, unless otherwise lawfully held. He is strongly cautioned to desist from any further criminal conduct and to remain a law-abiding citizen.
7. Orders accordingly.

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

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R. NYAKUNDI

JUDGE

Representation:

M/s Sidi Kirenge for the State

