



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL REVISION NO. E016 OF 2025

ALFRED TELEWA

APPLICANT

VERSUS

REPUBLIC

RESPONDENT

RULING

1. The Applicant Alfred Telewa was convicted for burglary contrary to Section 304 (2) of the Penal Code and stealing contrary to Section 268 as read with Section 275 of the Penal Code after pleading guilty to both charges. He was sentenced to three (3) years imprisonment. The record does not indicate whether the sentence was in respect of both counts or whether was to run concurrently or consecutively.

2. The Applicant now seeks revision of the sentence on the grounds that he is a first offender.
3. I have considered a sentence review report filed herein on 13/11/2025. It describes the Applicant as a 26 year old man who was the primary source of support for his ailing mother and father and a role model to his brothers who are alcoholics. He is also married and the sole breadwinner of his family.
4. I have considered the record of the proceedings and it appears that the Applicant's plea was equivocal. Whereas the Applicant and his co-Accused faced two separate and distinct charges of burglary and stealing, the facts that were read over to them were ambiguous. The Applicant was alleged to have committed the offences on 14/8/2024. The facts as read were as follows:-

“On 17/1/2025, Complainant reported that her house had been broken into on 14/8/2024 and clothes and a phone were stolen. While he was in town, he had spotted a person in a hood and jacket that was his. On approaching him, he stated that the 1st Accused had sold him the jacket and the 2nd

Accused (now the Applicant) **had stolen the phone. Both were arrested and charged.”**

5. The Applicant stated that the facts were true but in mitigation he said:-

“I seek forgiveness. I have a family that depend on me. I gave 1st Accused 4,000/= and in turn he gave me the phone to hold as collateral. This was since August 2024. I started using the phone as he took long to come for it.”

6. The plea taking process is well settled. In **Adan v. Republic [1973] EA 445**, it was held that where a plea of guilty is shown to be equivocal, then a plea of not guilty should be entered.

7. Although the Applicant is seeking revision of the sentence, justice dictates that when a plea is ambiguous, conditional, misunderstood or incomplete, it cannot be considered unequivocal. In cases where a plea contains a qualification or where the accused provides a justification for his actions, he effectively raises a defence and at such a point, the court should enter a plea of not guilty.

8. I note that this is an application for revision of sentence, but the court cannot be blind to a record that resulted in

an injustice to the Applicant who was unrepresented and may not have understood the plea taking process or the need to file an appeal against the conviction.

9. I find that this is a matter that is appropriate for the quashing and setting aside of the conviction and sentence.
10. The practice when such conviction and sentence is quashed and set aside is to send the matter back for retrial. But I note that the Applicant has been in prison since 3/2/2025 which is a year ago. Moreover, the sentence review report is positive. It recommends that the court consider reducing the offender's custodial sentence or converting it to a non-custodial alternative.
11. In my view, the one (1) year incarceration is enough to serve as a deterrence to the Applicant if he were to be found guilty and it is therefore not necessary to send him for a retrial.
12. The upshot is that the conviction and sentence imposed upon the Applicant is quashed and set aside. The Applicant is set free forthwith unless otherwise lawfully held.

Dated, signed and delivered at Kakamega this 23rd day of February 2026.

**A. C. BETT
JUDGE**

In the presence of:

Applicant in person

Mr. Sirtuy for the Respondent/State

Court Assistant: Polycap

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