



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**MISCELLANEOUS CRIMINAL CASE NO. E002 OF 2025**

**AHMED NASUR YASIN .....**

**APPLICANT**

**VERSUS**

**REPUBLIC .....**

**RESPONDENT**

**RULING**

1. The Applicant Ahmed Nasur Yasin was convicted of stealing contrary to Section 268 as read with Section 275 and handling stolen property contrary to Section 322 (1) (2) of the Penal Code after he had pleaded guilty to both counts.
2. Upon conviction, the trial court considered the plea for forgiveness and the pledge by the Applicant that he would

not repeat the offence, as well as the Prosecution's submissions that the Applicant had a criminal record having been convicted and placed on a one (1) year probation for stealing in Criminal Case No. E715 of 2024, and sentenced to six (6) months imprisonment in Criminal Case No. E671 of 2024. The trial court then sentenced the Applicant to three (3) years imprisonment on the first count and six (6) months imprisonment in the second count. Both sentences, which were imposed on 28/9/2024, were to run concurrently.

3. On 8/1/2025, the Applicant filed an application seeking a review of the sentence to a non-custodial sentence or a fine on the ground that he is a family man with a wife and five children who rely on him for his sole support. He also averred that he was of good character.
4. The court called for a sentence review report which established that the Applicant is a 37 years old habitual offender with repeated offences related to mobile phone thefts. The Probation Officer who conducted the social inquiry recommended that the Applicant complete his

- sentence in order to reinforce personal discipline, accountability and the value of lawful conduct.
5. The Respondent aligned itself with the sentence review report.
  6. It is well settled that sentencing is in the discretion of the trial court and that it can only be reviewed under limited circumstances pursuant to Section 362 and 364 of the Criminal Procedure Code. Section 362 mandates this court to examine the records of any proceedings of the subordinate court to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order.
  7. I have perused the lower court record and do not find any impropriety in the record that would call for this court to invoke its jurisdiction to review the sentence.
  8. Be that as it may, the hurdle for the Applicant is his past record as a repeat offender. The record and the sentence review report indicates that a previous non-custodial sentence afforded to the Applicant did not achieve the objective of reform that it was intended to. Similarly, an escalated custodial sentence of six (6) months did not result in deterrence for the Applicant. The Applicant

breached the previous probation order by re-offending and it is unlikely that he would have honoured a further non-custodial sentence. The court was therefore justified in the progressive escalation of the sentence as it aimed to deter the Applicant and protect the public.

9. I have carefully considered the application and while the sentence of three (3) years is the statutory maximum for the offence of stealing, it is not illegal or improper in the context of the Applicant who is a habitual offender exhibiting recidivism in his behavior. The application for sentence review is dismissed and the sentence of the trial court affirmed.
10. It is noted however, that the Applicant spent some time in custody during the proceedings. Pursuant to Section 333 (2) of the Criminal Procedure Code, his sentence should run from 3/4/2024 when he was first apprehended and arraigned in court.

Dated, signed, and delivered at Kakamega, this 3<sup>rd</sup> day of March 2026.

**A. C. BETT  
JUDGE**

**In the presence of:**

No appearance for the Applicant

Ms. Chala for the Respondent

Court Assistant: Polycap

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