



**Suleiman v Republic (Criminal Revision E194 of 2025)
[2026] KEHC 2604 (KLR) (25 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2604 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL REVISION E194 OF 2025
WM KAGENDO., J
FEBRUARY 25, 2026**

BETWEEN

SALIMADAM SULEIMAN APPLICANT

AND

THE REPUBLIC RESPONDENT

RULING

Background

1. The Applicant was charged and convicted of the offence of stealing contrary to Section 268(1) as read with Section 275 of the Penal Code, Cap 63, Laws of Kenya. He was sentenced to three (3) years' imprisonment.
2. The Applicant now seeks a revision of the sentence, requesting that it be converted into a probation order in accordance with Section 362 of the Criminal Procedure Code and Article 50(2)(p) of the Constitution, which guarantees the right to dignity and humane treatment.
3. The Court has considered the application, the supporting affidavit, and the report from the Kenya Prisons Services. The issue for determination is whether the application has merit and the appropriate orders to make.

Legal Framework

- 4 Section 4 of the Probation of Offenders Act provides:

“(1) Where a person is charged with an offence triable by a subordinate court, and the court is satisfied that the charge is proved but is of the opinion that, having regard to the age, character, antecedents, home surroundings, health, or mental condition of the offender, or to the nature of the offence, or to any extenuating circumstances in which the offence was committed, it is expedient to release the offender on probation, the court may—



- (a) convict the offender and make a probation order; or
 - (b) without proceeding to conviction, make a probation order.
- (2) Where any person is convicted of an offence by the High Court and the court is of the opinion that, having regard to the age, character, antecedents, home surroundings, health or mental condition of the offender, or to the nature of the offence, or to any extenuating circumstances, it is expedient to release the offender on probation, the court may, in lieu of sentencing him to any punishment, make a probation order.”
5. In *Kimutai vs Republic* (2024) KEHC 6871 (KLR), the Court outlined key factors to consider when determining custodial versus non-custodial sentences:
 1. Gravity of the offence – Imprisonment should be avoided for minor offences.
 2. Criminal history – First-time offenders may be considered for non-custodial sentences.
 3. Character of the offender – Non-custodial sentences are suitable for offenders who are remorseful and receptive to rehabilitation.
 4. Protection of the community – Custodial sentences may be warranted where the offender poses a threat.
 5. Responsibility to third parties – Consideration where dependents rely on the offender.
6. Further, in *Republic vs Felix Madalitso Keke*, Confirmation Appeal No. 404 of 2010 (unreported), the Court held:

“Sentencing must balance public interest, deterrence, justice, reformation, restoration, and rehabilitation. The dignity of the offender is paramount; sentences that are cruel, degrading, or inhuman do not serve public interest. Sentences should aim to reform the offender and promote reintegration into society.”

Assessment of the Applicant

7. The Applicant was convicted and sentenced to three (3) years’ imprisonment for stealing. The Kenya Prisons Service report highlights that he has:
 - Demonstrated remarkable commitment to rehabilitation and personal reform.
 - Actively participated in spiritual and educational programs, including completion of an Islamic program (certificate pending).
 - Exhibited problem-solving skills, teamwork, diligence, and leadership among fellow inmates.
 - Shown a genuine determination to reintegrate into society as a responsible and productive member.
8. These factors indicate that the Applicant is suitable for a non-custodial sentence and is receptive to probation. Denying him this opportunity would undermine his dignity and potential for constructive reintegration.



Decision

9. In light of the above considerations, and with due regard to the Applicant's right to dignity under Article 28 and the principles of humane treatment under Article 50(2)(p) of the Constitution, this Court allows the application.
10. The Applicant shall serve a probation sentence for 6 Months

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WENDY KAGENDO MICHENI

JUDGE

Signed by/for:

HON. LADY JUSTICE WENDY MICHENI

