

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MURANG'A
CRIMINAL REVISION NO. E031 OF 2025

PATRICK NDERITU MAINA.....
APPLICANT

VERSUS

REPUBLIC.....
RESPONDENT

RULING

- 1.The Applicant, *Patrick Nderitu Maina*, was charged with the offence of stealing contrary to **section 268** as read together with **275** of the Penal Code. Particulars are that on 6th March 2025 within Kamune sub-Location Gathunya Location, Mathioya sub-County within Murang'a County, the Applicant stole 3 hens, 2 ducks and one (1) cockerel all valued at Kshs.10,800 belonging to *Esther Wahura Mwangi*.
- 2.The Applicant was convicted on his own plea of guilty and sentenced to two (2) years imprisonment on 10th March 2025. During the trial, the Applicant is recorded to have stated as follows in mitigation: "I have nothing to say", which the trial Court interpreted to be an expression of lack of remorse.
- 3.**Section 275** of the **Penal Code** stipulates as follows:
Any person who steals anything capable of being stolen is guilty of the felony termed theft and is liable, unless owing to the circumstances of the theft or the nature of the thing stolen some other punishment is provided, to imprisonment for three years.

4. The Prosecution through Counsel P. Mwangi affirmed the legality of the sentence of two (2) years imprisonment imposed on the Applicant by the trial Court. Counsel further noted that during the trial, the Applicant being a first offender was not afforded either the opportunity of a pre-sentence report nor the option of a fine.
5. Through the instant Application filed on 8th April 2025, the Applicant is seeking a revision of sentence.
6. In the case of **Jackson Konde Kyalo vs Republic (2018) eKLR**, the Court reasoned as hereunder:
“The law and policy in sentencing are that where the law provides for a fine or imprisonment or both then unless the court for good reasons decides to give both, the accused person has a right to be given an option of a fine.”
7. In the case of **Annis Muhidin Nur v Republic, High Court Criminal Appeal No. 98 of 2001**, the Court held that as follows:
“...unless circumstances obtain which irresistibly [impede] a trial Court from imposing a fine first where the law provides for a fine in default of a prison term, the option of a fine must be visited first. This is a sound and tested principle in the art of sentencing.”
8. The **Judiciary Sentencing Policy Guidelines, 2016** and case law support the conclusion that while the trial Court is not legally bound to impose a fine on a first offender who pleads guilty, it is expected to consider the fine as a viable option and failure to do so may constitute an abuse of discretion, especially if the offense is not of a serious nature or if the offender demonstrates remorse and cooperation.

9. The provisions of **Section 362** of the **Criminal Procedure Code (CPC)** mandate this court in its revisional jurisdiction thus:

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

10. The Court subscribes to the position that although the trial Court recorded lack of remorse on the Applicant's part during the trial, the Applicant being a first offender was entitled to the option of a fine.

11. Having taken into consideration all the above factors against the applicable law, I find that the trial court erred in failing to consider the option of a fine when sentencing the Applicant.

12. Accordingly, the Court hereby sets aside the sentence of two (2) years imprisonment imposed upon the Applicant by the trial court and substitutes same with imprisonment for a term of one (1) year as from 10th March 2025 less the period already served.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 12TH DAY OF MARCH, 2026.

**HON. T. W. Ouya
JUDGE**

For Applicant..Patrick Nderitu Maina(Present at Mwea Prison)

For Respondent.....Mwakio for state

COURT ASSISTANT.....Brian

ORIGINAL