

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL REVISION NO. 181 OF 2025

JOSEPH MAINA WANJIRU

.....**APPLICANT**

VERSUS

REPUBLIC

RESPONDENT

RULING

1. In his undated Notice of Motion, the applicant sought review of the sentence meted out on him by the trial court in Murang'a Criminal Case No. E083 of 2025.

2. The record of the trial court shows that the applicant was tried and convicted of the offence of house breaking contrary to *Section 304 (1) of the Penal Code*.

The particulars alleged that on 4th February 2025 in Wanjoya Hostels, St. Mary's area in Murang'a Township, the applicant broke into the dwelling house of *Samuel Nganga Gicheru* using a master key with intent to commit a felony namely, stealing.

3. Upon conviction, the applicant was sentenced to serve two years imprisonment. He now seeks review of that sentence and prays that the same be substituted with a non-custodial sentence on grounds that he was a young man aged 26 years who desired to start a family; that he was a first offender and was remorseful for the offence he committed.
4. At the hearing, the applicant made oral submissions in support of his application. He reiterated the mitigating factors stated in his supporting affidavit and added that his mother passed away recently and his only brother was left all alone. Further, he maintained his innocence claiming that he was arrested because he was found in the wrong place at the wrong time.
5. The application is not contested by the Respondent. Learned prosecution counsel *Mr. Mwangi* conceded to the application on grounds that when imposing sentence, the learned trial magistrate failed to consider that the applicant was a first offender.
6. After hearing submissions from both parties, I called for a sentence review report to guide me in determining the

application. The sentence review report was filed 2nd March 2026. The report confirmed, *inter alia*, that the applicant was genuinely remorseful for his actions and that he had undergone rehabilitation while in prison; that he was ready to lead a positive life free from conflict with the law.

7. Having considered the application, I find that it invokes the revisional jurisdiction of this court which is donated by *Section 362* as read with *Section 364* of the *Criminal Procedure Code*. *Section 362* empowers this court to call for and examine the record of the trial court to satisfy itself as to the correctness, legality or propriety of any order or sentence passed by the court or the regularity of the proceedings leading to the impugned order or sentence.
8. This being an application for sentence review, it is important to remind ourselves of the principles that guides the court in determining whether or not to interfere with a sentence passed by the trial court. The principles are anchored on the fact that sentencing rests with the discretion of the trial court and a court exercising supervisory jurisdiction whether appellate or revisional jurisdiction must exercise restraint

and should interfere with the trial court's discretion in sentencing only in limited circumstances.

9. The aforesaid principles were articulately enumerated in **Bernard Kimani Gacheru V Republic (2002) eKLR** in which the Court of Appeal expressed itself as follows:

“.....On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account, some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already stated is shown to exist.”

10. I have considered the instant application and the submissions made in support thereof. I have also read the record of the trial court. The record confirms that when sentencing the applicant, the learned trial magistrate erred by considering extraneous matters and by failing to consider

an important relevant factor which is that the applicant was a first offender. The proceedings of the trial court also apparently vindicates the applicant's claim that he was arrested and charged with the offence subject of his conviction because he was found in the wrong place at the wrong time. It is my view that the learned trial magistrate did not correctly appreciate the circumstances in which the applicant was arrested. Though for different reasons, the prosecution counsel was right in conceding to the application.

- 11.** In view of the foregoing, I find merit in the application and it is hereby allowed. As the record shows that the applicant has served a period of over 6 months in prison, I hereby revise the sentence passed by the trial court on terms that the sentence is hereby commuted to the period already served. The applicant shall accordingly be released from prison forthwith unless otherwise lawfully held.

It is so ordered.

DATED, SIGNED and DELIVERED at **MURANGA** this 12th day of

March, 2025.

HON. C. W. GITHUA
JUDGE

In the presence of:

The applicant

Mr. Mwangi for the Respondent

Ms. Susan Waiganjo, Court Assistant

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