



**Kamara v Republic (Miscellaneous Criminal Application
E026 of 2025) [2026] KEHC 4780 (KLR) (9 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 4780 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
MISCELLANEOUS CRIMINAL APPLICATION E026 OF 2025**

EM MURIITHI, J

APRIL 9, 2026

BETWEEN

TIMOTHY MAINA KAMARA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. By a Notice of Motion dated 25/8/2025 the applicant who is serving concurrent sentence of imprisonment for six (6) and two (2) years for the offences of house breaking and stealing contrary to section of the Penal Code, seeks review of his sentence and prays for specific relief as follows:
 1. That, this honourable court make a finding that the period of 1 year, 2months 28 days I was in remand was not considered when the honourable court was pronouncing its sentence.
 2. That, this court considers a non-custodial sentence for the applicant after considering period of incarceration in remand plus the served portion of the sentence on basis that the applicant herein is now fully rehabilitated and ready to be reintegrated back to the society, also that he left a young child (girl) of 10 years under the care of his neighbour since the applicant's parents and wife are deceased.
 3. That, this court grants an order to both Officer in charge prison & probation office – Kerugoya to provide a report touching on the applicants issue herein.”
2. The application is supported by an affidavit setting out the facts relied on as follows:

“Supporting affidavit

 1. That, I am a Kenyan male adult of sound mind hence competent to swear this affidavit.



2. That, I 'm currently being held at Kerugoya GK Prison serving a sentence of 6 years for the offence of store breaking c/sec 306 (a) and stealing c/sec 275 of the Penal Code.
3. That, I was convicted and sentenced by PM's Court at Gichugu on 22nd January, 2025 and during sentencing the trial magistrate did not consider the period of 1 year, 2 months and 28 days I was in remand as provided in sec 333(2) CPC.
4. That, I was arrested on 25th December, 2018 and I was released on bond on 20th February, 2020. Later on, I was incarcerated from 20th December, 2024 to 22nd January, 2025 after judgment pending sentencing. I was in custody all that period 1 year, 2 months and 28 days in total.
5. That, I pray this honourable court to consider this period I was in custody in computing my sentence and afterwards a non-custodial sentence for the applicant.
6. That, I have been in prison serving my sentence from 10th January, 2025 up to this day of this affidavit.
7. That, I have been in custody for a period of 1 year, 10 months all in total including the period stayed in remand plus part served in my sentence.
8. That I'm the only sole breadwinner of my young daughter who is currently under the care of my neighbour due to my imprisonment since both my parents and my wife are deceased.
9. That, I request this honourable to grant a non-custodial sentence as I am humbly remorseful, reformed and ready join the society back home in nation building.”

3. The Probation officer's report dated 27/2/2026 recommends a Community Service Order as follows:

H. Conclusion

Your Lordship, the appellant before you is forty-four years old and is currently serving an eight year sentence for the offence of store breaking and stealing. Prior to his arrest, he was engaged in farming and worked as a lorry driver. During his period of incarceration, he has maintained good conduct and demonstrated notable signs of rehabilitation and personal transformation. He has been actively engaged in prison industry work as a painter, reflecting positive use of his time and commitment to reform.

Based on the findings of this social inquiry, the inmate is the sole surviving parent of a fourteen year-old daughter who is currently under the care of a family friend. During a home visit, the child was found at home on a school day, having been sent away from school due to nonpayment of school fees. Both the child and her caregiver pleaded with the court to consider the appellant's release, citing the significant financial and emotional hardship occasioned by his continued incarceration.

While the offender has maintained his denial of the offence, he has nonetheless expressed genuine remorse regarding the outcome of the matter and has accepted the court's judgment. He pleaded with the court to consider a non-custodial sentence, assuring full compliance with any conditions that may be imposed. He emphasized his strong desire



to reunite with his child and to resume full parental responsibility as her only surviving parent. Further, his uncle, brother, and friend have expressed willingness to support his reintegration. The community and local administration have also indicated readiness to receive him back, noting that he does not pose a threat to public peace and safety.

Regarding the complainant, CIO Mhuri Coffee Factory, the manager confirmed that the affected farmers were compensated in November 2025 and indicated that the inmate is not known to the management, leaving the matter to the court's discretion.

I. Recommendations

Your Lordship, we find the inmate suitable for a Community Service Order (CSO) for a period of two years and recommend his placement at Gatuto Secondary School under the supervision of the Principal.

Mercy Wafula

Probation Officer - Kirinyaga

27/02/2026”

4. The DPP agreed with the recommendation of the Probation Officer when the EPD (Earliest Possible Date of release) was indicated in error as 24/10/2027. It is now confirmed by the Prison Report dated 18/3/2026 that the correct date of release (EPD) is 20/12/2028.
5. The Prison Report on the applicant filed on 18/3/2026 at the request of the Court (upon the applicant's prayer No. 3) indicates that the applicant had been in pre-trial remand for 1 Year, 2 Months 28 Days and further reports as follows:

Officer in charge recommendations:-

This prisoner has been in prison for an approximate period of two years and four months from when he was arrested up to now he has no offence against prison rules and regulations. he is disciplined, hard working and social to other inmates and also officers. he is a stage iii prisoner in progressive stage system. he is a committed religious man and a member of protestant chaplaincy who participates in spiritual matters in prison. he is remorseful for the offence and if given second chance he will be useful to his community in nation building. therefore, this is to confirm that this inmate has shown reforms in his character and is fully rehabilitated as per the prison mandate.

David Gachago (SP)

For Officer In Charge

Kerugoya Prison”

6. Taking into account the time spent in custody while the applicant waited for the conclusion of his trial between and his sentence on 10/1/2025, the earliest possible date of the applicant's release is 22nd December 2028.
7. The Court has considered the application on the principles for appellate interference with sentences in the decision of Court of Appeal in *Wanjema v. R.* (1971) EA 493, 494 that –

“An appellate Court should not interfere with the discretion which a trial Court has exercised as to sentence unless it is evident that it overlooked some material factor, took into account some immaterial factor, acted on a wrong principle or the sentence is manifestly excessive



in the circumstances of the case. The instant sentence merits this Court’s interference with it on each of these grounds. No account was taken, as it should have been, of the fact that the appellant pleaded guilty: Skone (1967), 51 Cr. App. R. 165 and Godfrey (1967), 51 Cr. App. R. 449. (This admits no doubt because the magistrate awarded the maximum sentence to this offender; which of itself is unusual.)”

8. The trial court was clear as to the need for a custodial sentence in the treatment of the applicant in its sentence of 10/1/2025 as follows:

Sentence

The accused is convicted of the charge of store breaking and stealing which carry a penalty of imprisonment for a term of up to seven years. For the 1st limb and 3 years for the second.

I have considered the mitigation of the accused. He is a first offender. I have further considered the circumstances under which the offence was committed the factory lost coffee worth Ksh. 2.5 million that night, a cash crop in the area, the farmers have not been compensated six years down the line. The accused indeed makes no suggestion that there have been amends. A deterrent sentence is necessary.

Regarding the last limb the accused is sentenced to a term of imprisonment of six (6) years. Regarding the 2nd limb that of stealing the accused is sentenced to a term of imprisonment of two (2) years. The sentences will run concurrently. The period spent in remand from the 20th December, 2024 be factored in computing the term. ROA explained.

On the issue of the child let the children’s officer be made aware of the situation. Sureties are discharged.

Delivered in open court this 10th January, 2025 in the presence of the accused. Prosecution and Court Assistant.

Hon. L.w. Kabaria – PM

10.1.2025.”

9. The Court does not find any reason to interfere with the sentencing discretion of the trial Court. See Wanjema, supra.
10. The applicant is serving a custodial sentence for serious offences of housebreaking and stealing. The application has not been filed by the prison Authorities indicating that they are unable to deal with any medical or health challenge of the applicant. Indeed, there is no indication of ill-health of the applicant and it is the applicant who has sought an order for the Prison Authority to give a report on him. The Probation Officer’s report has not considered the seriousness of the charges. The period of sentence time remaining at two (2) year eight (8) months, taking into account the pre-trial detention, is still substantial and does not qualify for the usual decongestion of prison initiatives in view of the nature of the charges.
11. That the applicant is responsible for his fourteen (14) year old child does not have much weight as the child has been provided for as shown in the order of the trial court set out above since sentence of 10/1/2025.

ORDERS

12. Accordingly, for the reasons set out above, the Court finds that there is no ground for this court to interfere with the sentence. The application for review of sentence is declined.



13. File Closed.

Order accordingly.

DATED AND DELIVERED THIS 9TH DAY OF APRIL 2026.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Mwangi for the DPP.

Applicant in person.

