

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CRIMINAL MISC. NO. E095 OF 2025

PEREZ IRERI.....
APPLICANT

VERSUS

REPUBLIC.....
RESPONDENT

Coram: Before Justice R. Nyakundi

Ms Kirenge for State

RULING

1. Before this Court is a Notice of Motion expressed to be have been brought under Sections 362 & 364 of the CPC in reliance to Article 50(2)(q) of Constitution of Kenya.
 - a. *That I am seeking for orders to review the 4 years' term sentence to 2 years or less following imposed conviction on Cr. No. E1943/24 & E1943/24 two years each totaling to 4 years.*
 - b. *That I am seeking since the offences and particulars were under one file, I pray the sentence to run concurrently on two years' term basis or lesser.*
 - c. *That I am seeking Court orders sentence to run concurrently because the case was heard at two different Courts which made it impossible to mitigate for concurrent sentence.*
2. In support of the application is the annexed affidavit of Perez Ileri who deponed as follows:
 - a. *That I am a Kenyan citizen adult male of sound mind.*

- b. *That I was charged with the offence of stealing on main charge and sentenced two years' imprisonment and preparation to commit a felony on count two where again I was later sentenced two years' imprisonment by two different respective Courts.*
 - c. *That I am filing this miscellaneous application under constitutional law that two different sentence to run concurrently because it is under one file.*
 - d. *That I am seeking Court orders for sentence to run concurrently because the cases were heard on two different Courts which could not make me mitigate for concurrent.*
3. Consequently, the Probation Officer filed a sentence review report which had the following components:

CURRENT HOME AND PERSONAL CIRCUMSTANCES

The inmate is the son of the late John Kamande and Jane Kamande, a businesswoman operating at Huruma Market in Eldoret. He is the third-born in a family of four siblings: Mercy Njoki, who is a college student; Bernard Ngaruya, a matatu driver plying the Huruma route in Eldoret; and Persi Njambi, who is currently in secondary school. The inmate's mother resides in a rented house within Shauri Estate, Huruma Location. Prior to his arrest, the inmate was living in a rented house in the neighboring Kipkaren Estate, Pioneer Location. The family is of low socio-economic status, as the mother's income is low. Nonetheless, family relationships are reported to be cordial. The mother has visited the inmate once during his period of incarceration, indicating continued family support. The inmate dropped out of school while in Form Two. Thereafter, he engaged in casual employment as a matatu tout to sustain himself. Although he lived independently, he maintained regular contact with his mother. The inmate has minimal social responsibilities but demonstrates a significant need for

structured support and guidance to promote stability and reduce the risk of reoffending

PRISON REHABILITATION

The inmate has been in custody for 1 year and four months. While in custody, the inmate has been involved in the prison activities and rehabilitation programs. This has instilled discipline, accountability, and a strong sense of personal responsibility. These skills are expected to support his rehabilitation and enhance his chances of leading a productive and honest life if granted a non-custodial sentence.

OFFENDERS' ATTITUDE AND IMPACT OF IMPRISONMENT

The inmate is remorseful for his involvement in the offence which was influenced by his peers. He reports that his time in custody has given him an opportunity to reflect on his choices and the consequences they have had on his life. Through this experience, he has come to appreciate the importance of personal accountability and making responsible decisions. He further acknowledges that negative peer influence played a significant role in his offending behaviour and expresses a strong commitment to distancing himself from such associations in the future.

CONCLUSION

Your Lordship, the inmate is a 23-year-old young adult who remains at a formative stage of life where effective rehabilitation is both realistic and attainable. He is currently serving two separate sentences of two years each, arising from convictions for Stealing contrary to Section 268 as read with Section 275 of the Penal Code, and Preparation to Commit a Felony contrary to Section 308(2) of the Penal Code. Through a miscellaneous application on record, he has prayed that the Honourable Court considers ordering the sentences to run

concurrently, which would see the sentence conclude on 14th February 2026. The inmate has expressed remorse and informs that the period in custody allowed him to reflect on the consequences of his actions, attributing his offending behaviour to negative peer influence and poor personal judgment. He has since indicated willingness to reform and seeks an opportunity to reorganize and rebuild his life in a lawful and constructive manner. In light of his age, his positive rehabilitative attitude, and the self-awareness gained during his period of incarceration, the prognosis for successful reintegration into the community is favorable. The consideration of a non-custodial sentence would facilitate structured supervision, focused rehabilitative interventions, and the mobilization of community-based support.

RECOMMENDATION

In view of the foregoing findings, and considering that the offender has already served a portion of his sentence in custody, the Honourable Court may find merit in his application. However, in the event that the Court is not inclined to allow the sentences to run concurrently, we recommended that the inmate be considered to complete remaining portion of his sentence under a non-custodial sentence. He may be placed on a Community Service Order (CSO) at the Eldoret Probation Office for the remaining period of six (6) months.

Decision

- 4.** Sentencing is at the discretion of the trial Court. The Applicant was arraigned before the Court of law in which he was convicted on his own plea of guilty and sentenced to serve 2 years' imprisonment. He has since served substantial part of the sentence and he has now moved this Court to have the sentence reviewed and have it substituted with non-custodial sentence on probation.

5. Both the trial Court and the appellate Courts are guided by the Sentence Policy Guidelines which provides *inter alia* as follows:

- **Proportionality:** *The sentence meted out must be proportionate to the offending behaviour meaning it must not be more or less than is merited in view of the gravity of the offence. Proportionality of the sentence to the offending behaviour is weighted in view of the actual, foreseeable, and intended impact of the offence as well as the responsibility of the offender.*
- **Equality/Uniformity/Parity/Consistency/Impartiality:** *The same sentences should be imposed for same offences committed by offenders in similar circumstances.*
- **Accountability and Transparency:** *The reasoning behind the determination of sentence should be clearly set out and in accordance with the law and the sentencing principles laid out in these guidelines.*
- **Inclusiveness:** *Both the offender and the victim should participate in and inform the sentencing process.*
- **Totality of the Sentence:** *The sentence passed for offenders convicted for multiple counts must be just and proportionate, taking into account the offending behaviour as a whole.*
- **Retribution:** *To punish the offender for their criminal conduct in a just manner.*
- **Deterrence:** *To deter the offender from committing a similar or any other offence in future as well as to discourage the public from committing offences.*
- **Rehabilitation:** *To enable the offender to reform from his/her criminal disposition and become a law-abiding person.*
- **Restorative justice:** *To address the needs arising from the criminal conduct such as loss and damages sustained by the victim or the community and to promote a sense of responsibility through the offender's contribution towards meeting those needs.*

- **Community protection:** To protect the community by removing the offender from the community thus avoiding the further perpetuation of the offender's criminal acts.
- **Denunciation:** To clearly communicate the community's condemnation of the criminal conduct.
- **Reconciliation:** To mend the relationship between the offender, the victim and the community.
- **Reintegration:** To facilitate the re-entry of the offender into the society.

6. The fundamental purpose of sentencing includes protecting society. The objectives of sentencing, one of which is rehabilitating offenders, are supportive of that purpose. No one sentencing objective trumps the others, and whatever weight a Judge accords to the sentencing objectives, the resulting sentence must respect the fundamental principle of proportionality. While a sentence must not extend beyond what is proportionate merely to protect the society, the protection of society is a material factor in fixing an appropriate sentence. The circumstances unique to each case will produce a range of acceptable outcomes within which a fit sentence can be fixed.
7. I have reviewed the facts of this case and being guided by the doctrine of proportionality which *sine qua non* of a just sanction with its fundamentals *inter alia*; First the principle ensures that a sentence reflects the gravity of the offence. This is closely tied to the objective of denunciation. It promotes justice for victims and ensures public confidence in the justice system. Second, the principle of proportionality ensures that a sentence does not exceed what is appropriate, given the moral blameworthiness of the offender. In this sense, the principle serves a limiting or restraining function and ensures justice for the offender.
8. With this background, the Probation Officer's Report is responsive and I do hereby exercise discretion by placing the Applicant on Community Service

Order at the Eldoret Probation Office for the remaining period of six months. Orders accordingly.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 4TH MAY 2026.

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R. NYAKUNDI
JUDGE