



REPUBLIC OF KENYA



**KENYA LAW**  
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**Erupe v Republic (Criminal Revision E140 of 2025)  
[2025] KEHC 11793 (KLR) (6 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 11793 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E140 OF 2025  
RN NYAKUNDI, J  
AUGUST 6, 2025**

**BETWEEN**

**AMOS EKALE ERUPE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

Representation:

M/s Sidi for the state

1. The applicant herein was charged with the offence of stealing contrary to section 268 as read with 275 of the Penal Code. The brief facts were that the Applicant on the 3<sup>rd</sup> day of January 2025 at Miti Mbaao area in Moi's Bridge town, Soy sub-county, within Uasin Gishu County, stole one mobile phone make Techno pop 5 valued at Kshs. 11,000/= the property of Paul Umbuge. He pleaded guilty to the offence, was convicted and sentenced to a fine of Kshs. 20,000/= in default 12 months' imprisonment.

**Decision**

2. The applicant has moved this court by way of revision under section 362 & 364 of the Criminal Procedure Code. The facts of the case are very clear as recorded by the learned trial magistrate. On the face of it, the applicant was treated as a first offender with no previous conviction and the circumstance upon which he stole 1 mobile phone make Techno from the complainant. The stolen item was never recovered during the pendency of investigations and arraignment in court.
3. The cardinal sentencing consideration is the principle of proportionality, which in broad terms means that the seriousness of the offence should be matched by the severity of the hardship. Accordingly, it follows that the harshness of the prison conditions should be a factor that influences the length of a prison term. The legal authorities, however, have not consistently endorsed this position.



4. In recent times, the courts have displayed an increasing reluctance to accord mitigatory weight to harsh prison conditions. We accept that there are a number of reasons why courts might be reluctant to attach significance to the nature of prison conditions in the sentencing calculus. First, prisoner classification and designation is a matter for the executive, not the courts, and, at the time of sentencing, it is normally not feasible to anticipate accurately the circumstances in which an offender will be imprisoned. Secondly, prison conditions vary markedly and it is not easy to make informed and accurate comparisons between different forms of detention. Thirdly, if harsh prison time is a concrete and significant mitigating factor so far as sentencing length is concerned, prisoners would have an incentive to misbehave in the prison environment in order to be reclassified into stricter conditions to reduce the length of their sentence.
5. The applicant was invited by the probation officer to participate in the social inquiry report to establish his suitability to serve in the regime of non-custodial sentence. Unfortunately he declined to be interviewed as a consequence of which this court lacks the material evidence to the extent of which his sentence can be reviewed and have it substituted with that of probation or community based service order. The application therefore is dismissed for want of merit. It is so ordered

**DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 6<sup>TH</sup> AUGUST 2025**

.....

**R. NYAKUNDI**  
**JUDGE**

