



REPUBLIC OF KENYA



**KENYA LAW**  
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**Omondi v Republic (Criminal Revision E157 of 2025)  
[2025] KEHC 11579 (KLR) (4 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 11579 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E157 OF 2025  
RN NYAKUNDI, J  
AUGUST 4, 2025**

**BETWEEN**

**COLLINS OMONDI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being a Revision from the Judgement of Hon Odhiambo dated on 4.3.2025)*

**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 section 275 of the *Penal Code*. The brief facts are that the Applicant on the 14<sup>th</sup> day of February 2025 at Chips Road area in Kimumu location Moiben sub county within Uasin Gishu county stole a mobile phone make Nokia C31 worth Kshs. 33,000/= the property of Sheila Jepkosgei
2. He pleaded guilty to the offence, was convicted and fined Kshs. 60,000/= in default, a sentence of 1-year imprisonment.

**Decision**

3. This application is based on the provisions of the criminal procedure code namely Section 357, 362, 364 as read with 382. *The constitution* also provides under Art 50 (2) (p) (q) as follows
  - (p) to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishments for the offence has been changed between the time that the offence was committed and the time of sentencing; and



- (q) If convicted, to appeal to, or apply for review by, a higher court as prescribed by law.
  - (3) If this Article requires information to be given to a person, the information shall be given in language that the person understands.
4. The same constitution in Art 50 (6) (a) (b) expressly states as follows: A person who is convicted of a criminal offence may petition the High Court for a new trial if-
- a. The person's appeal, if any, has been dismissed by the highest court to which the person is entitled to appeal, or the person did not appeal within the time allowed for appeal; and
  - b. new and compelling evidence has become available.
5. This application is based on the social inquiry report dated 30<sup>th</sup> July 2025 carried out by the probation officer which contextualized the issues as follows: Sources of information prison records, inmate families, community and the complainant

#### Current Family And Personal History

The inmate is the first child in a family of 3 siblings. He comes from humble family where he has been brought up by a single parent. He did not interact with his father as inquiries inform us that he passed on when he was young. His mother remarried however he never had a good relationship with his step father. His mother is a hair dresser, and despite the financial constraints the family is able to meet their basic needs. It is evident from the inquiry that he comes from a well-knit family and none of his siblings has criminal tendencies. The inmate did not go beyond primary school out of his own violation. He gained masonry skills at Rera youth polytechnic however he did not complete his course out of his own violation. The inmate is single with no dependents, Prior to his arrest, the inmate was in a rental house within Kimumu area with his mother, however it is reported that there are days that he would disappear and his whereabouts would be unknown, his mother would be called because of his notorious habits. He is a habitual thief that has survived the rage of the angry members of the community on several occasions. The family is of the opinion that he should not be release at this point for non-custodial sentence

#### Prison Assessment, Rehabilitation And Re-integration

Our interview with the prison administration indicate he was assigned cleaning duties at the prison. Upon release he intends to go back to Kimumu area where he will engage in casual jobs.

#### Offender's Attitude Towards Non-custodial Measures

The inmate is pleading for a non-custodial sentence on grounds that he has reformed and he promises not to reoffend.

#### Recommendations

Your lordship, the inmate has shown utter remorse, however his mother requests that he should not be released at this point as he feels he has not learnt his lesson. The time she has visited him to try to talk to him to change his ways she says she has always left disappointed as he insults her Consequently, we decline to recommend him for non-custodial sentence at this moment.

6. The role of non-custodial sentence should underpin our penal system in which custodial sentence remains a recourse of last resort in punishing offenders. The sentence policy guidelines of the judiciary



2023 provides a framework in which Judicial discretion should be exercised to arrive at a fair and proportionate sentence on individualized circumstances. The objectives and principles of sentencing are well articulated and defined as follows:

- a. Retribution: to punish the offender for his/her criminal conduct in a just manner.
  - b. Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
  - c. Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law-abiding person.
  - d. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.
  - e. Community protection: to protect the community by incapacitating the offender.
  - f. Denunciation: to communicate the community's condemnation of the criminal conduct.
  - g. Reconciliation: To mend the relationship between the offender, the victim and the community.
  - h. Reintegration: To facilitate the re-entry of the offender into the society.
7. In a documented research by Chrispinus Adenya Aben titled; Factors Influencing Success of Non-Custodial Sentence in Kenya: A Case of Kilifi District in Kilifi County 2011 he made the following observations: First and foremost, prison population around the world is increasingly placing enormous financial burdens on governments. There is growing recognition that imprisonment does not achieve some of its most important stated objectives, as well as being harmful to offenders, families and in the long term to the community (UNODC, 2006).
8. It came out clearly from his research; Supervision is an essential component of community based correction with the primary objective of enforcing compliance with the conditions of release to minimize risk to the public and to re-integrate the offender into the law abiding lifestyle. Lax supervision and failure to deal firmly with those who persistently violate the terms of release can bring an entire system into disrepute in criminal justice. (Killingier GG and Cromwell P.F, 1990). "The law is without doubt a remedy for great evils, yet it brings with it evils of its own". (Subbrano V.C.G. 1993). There are three primary gateways in the criminal justice. The first is at the police at the initial stage of apprehension, the second is at the court after the determination of guilt and passing of a sentence and the third is the gateway to the community at the conclusion of the sentence (Johnson R, 2003).
9. Rule 8.2 of the Tokyo rules on non-custodial affirm that courts or sentencing authorities may dispose cases in any of the following ways-verbal sanctions, admonitions, reprimands and warning, conditional discharge, status penalty, economic sanctions and monetary restitution, restitution to the victim or compensation order, confiscation or expropriation, suspended or deferred sentence, probation and judicial supervision, community service order, house arrest and any other non-institutional treatment. Supervision is critical in realization of sentencing objectives. This is operationalized as poor and laced supervision leads to reconviction and abscondism. The quality and number of contacts between the offender are key in reforming, re-integrating the offender. The caseload per officer and the frequency of contacts between the officer and the probationer determines the level of intensity of supervision based on the risk category of the probationer. The community plays key role in having offenders change. Community attitude, home environment is deterministic of offender's potential to change.



10. Time has come to re-conceptualize the effectiveness of custodial sentencing to promote a clear, fair, uniform and consistent approach by all levels of courts. A theme of any review of sentence must not lose sight of the objectives and sentencing. Am of the consider view that an effective sentence must also serve to communicate to society that justice has been done and the wrong doer punished and denounced for his or her conduct. Generally speaking, over time I have been involved in the practice of law as a trier of criminal cases and there is no probative evidence that the harsher, punitive or severe the sentence does provide greater marginal deterrent effects.
11. Sentencing is a discretionary process mainly exercised by trial courts who have the advantage to appreciate the circumstances of the offence and how it applies to the sentencing objectives and principles within the regulatory framework of our sentencing policy guideline 2023. This court is being asked to review the custodial sentence and have it substituted with non-custodial sentence. As I appreciate the record and the impugned decision on sentence I bear in mind that this is one area of law which involves the weighing of may complex factors, it will always be possible to point to some factors which should arguably have been taken into account or left out of account; even if they should have been, the court should not intervene unless it is convinced that this would have resulted in the decision going the other way.
12. There is a big outcry amongst our communities and society at large on the level of inconsistency, disparity, unfairness, and disproportionate verdicts on sentence being imposed by the trial courts and on even on appeal which do not reflect the sentencing objectives and principles in our policy document. As if that is not enough the letter and spirit of our sentencing scheme seems to depart from the legislatures intention and vision in the criminal administration of justice. Sentencing in Kenya ought to be fair and proportionate to the crime being prosecuted by the state as against the accused persons or defendant. These canons on fair and proportionate sentence requires that:
  - i. All relevant factors of a case must be considered including the seriousness of the offence, the impact on the victim and others affected by the case, and the circumstances of the offender;
  - ii. Sentences should be no more severe than is necessary to achieve the appropriate purposes of sentencing in each case;
  - iii. Reasons for sentencing decisions must be stated as clearly and openly as circumstances permit;
  - iv. Sentencing decisions must be made lawfully and sentences must have regard to any sentencing guidelines which are applicable;
  - v. People should be treated equally, without discrimination; and
  - vi. Sentencing decisions should treat similar cases in a similar way, assisting consistency and predictability
13. I have read the record and the probation officer report and I concur with the findings made on inquiry that the applicant is not fit and eligible to be released from custody so as to serve non-custodial sentence as part of the rehabilitation program. The application for review is therefore dismissed under section 382 of the CPC. It is so ordered.

**DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 4<sup>TH</sup> AUGUST 2025**

.....

**R. NYAKUNDI**

**JUDGE**

