



**Kibet alias Kibe v Republic (Criminal Revision E039 of 2025)
[2025] KEHC 12419 (KLR) (4 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12419 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E039 OF 2025
RN NYAKUNDI, J
SEPTEMBER 4, 2025**

BETWEEN

ELVIS KIBET ALIAS KIBE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Elvis Kibet Alias Kibe was charged with the offence of house breaking contrary to Section 304 (1) b and stealing contrary to Section 279 (b) of the Penal Code.
2. The brief facts of the particulars are that: Count I: On 23rd July 2024 at 11.30 a.m. at Chebarus village within Cheptiret Location Kesses Sub-County within Uasin Gishu County broke and entered the dwelling house of Lazarus Kirwa with intent to steal therein and did steal 3 jembes, a panga, 2 sets of serving bowls the property of Lazarus Kirwa valued at Kshs 3500/=.
3. In Count II – Stealing contrary to Section 268 of the Penal Code. That on 23rd July 2024 at 11.20 am at Chebarus village within Cheptiret Location Kesses Sub-County within Uasin Gishu County stole seven (7) posts and barbed wire property of Lazarus Kirwa valued at Ksh 2500/=.
4. The Applicant on his own plea of guilty was convicted and sentenced to pay a fine of Kshs 10,000/= in default to serve 6 months’ imprisonment. The sentence to run consecutive to the one he’s currently serving.

Decision

5. It is trite that any person convicted and sentenced before any court in Kenya has right to an appeal or review to a higher body. With regard to this application the Applicant seeks leave of this court to have his sentence reviewed under Section 362 as read with 364 of the Criminal Procedure Code. Turning to this issue of sentence the court must remind itself that sentencing should always follow the



principles set down in the statute, the Judiciary Sentencing Policy Guidelines, Judicial precedents and other applicable tools like the Children’s or Probation Officers Reports. From a neighboring common law jurisdiction, the Court in *Madalitso Keke v The Republic*, Confirmation Case No. 404 of 2010 (HC) (PR) Unrep) stated that:

“Hitherto the basis on which appellate courts have had to overturn the sentence has basically been that the sentence was manifestly excessive or inadequate as to comport an improper exercise of the discretion. In either case the sentence was inadequate or excessive if there would be a sense of shock after due regard of the offence, offender, victim and the public, for which criminal justice serves an interest in relation to the latter, it must not be ignored that it is also in the public interest that criminals are treated justly, humanely and accordingly to the fundamental principles and provisions of our new constitutional order. Section 19(3) of the Constitution now creates a fundamental right to citizens not to be subjected to “Cruel, inhuman or degrading treatment or punishment.” Sentences courts pass are therefore, violation of the Section if they are ‘cruel, inhuman or degrading’. It is not that the sentences be all or are two of these; the sentences will be unconstitutional on any one ground. Sentencers must now be wary and ensure that in sentencing offenders the sentences comport with these constitutional rights. No sentence is per se constitutional; courts must, therefore, have to ensure that their sentences do not offend section of the Constitution (*Solemn v Helm* – 463 U.S 277 (1983), United Supreme Court:

In sum, we hold as a matter of principle that a criminal sentence must be proportionate to the crime for which the defendant has been convicted. Reviewing courts of course, should grant substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishments for crimes, as well as to the discretion that trial courts possess in sentencing convicted criminals [footnote 16] But no penalty is per se constitutional. As the Court noted in *Robinson v California*, 370 U.S at 370 U.S. 667, a single day in prison may be unconstitutional in some circumstances.”

6. The circumstance of this case fails to demonstrate existence of the conditions set out in Section 362 of the Criminal Procedure Code and the dicta in the above authorities to warrant review of sentence. As a consequence, the application is dismissed under Section 382 of the Criminal Procedure Code.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET THIS 4th DAY OF SEPTEMBER 2025.

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R. NYAKUNDI

JUDGE

M/s Sidi Kirenge for the State

