



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kiboi v Republic (Criminal Revision E033 of 2025)  
[2025] KEHC 12320 (KLR) (3 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12320 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E033 OF 2025  
RN NYAKUNDI, J  
SEPTEMBER 3, 2025**

**BETWEEN**

**NAHASHION KIBARE KIBOI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

Representation

M/s Sidi Kirenge for the State

1. The Applicant Nahashion Kibare Kiboi was charged with the offence of stealing contrary to Section 268(1) as read with Section 275 of the Penal Code.
2. The brief facts of the particulars are that on the night of 19<sup>th</sup> November 2024 at around 0200hrs in Eldoret Police Station parking yard in Turbo Sub County within Uasin Gishu County stole 20 liters of diesel from motor vehicle Registration Number KBW 836V Isuzu NKR being valued at 4220/= the property of Kenya Police service Eldoret Police Station.
3. The Applicant on his plea of guilty was convicted to serve one-year custodial sentence on 27/11/2024.
4. Being aggrieved and dissatisfied with the decision he approached this court by way of a revision under Section 362 as read with Section 364 of the Criminal Procedure Code.



## Decision

5. The principles guiding interference with sentencing by the appellate Court were properly set out in *S vs. Malgas* 2001 (1) SACR 469 (SCA) at Para 12 where it was held that:

“A court exercising appellate jurisdiction cannot, in the absence of material misdirection by the trial court, approach the question of sentence as if it were the trial court and then substitute the sentence arrived at by it simply because it prefers it. To do so would be to usurp the sentencing discretion of the trial court .... However, even in the absence of material misdirection, an appellate court may yet be justified in interfering with the sentence imposed by the trial court. It may do so when the disparity between the sentence of the trial court and the sentence which the appellate court would have imposed had it been the trial court is so marked that it can properly be described as “shocking”, “startling” or “disturbingly inappropriate”. (See also *Benard Kimani Gacheru vs. Republic* [2002] eKLR.

6. I have read and reviewed the entire record. There is no error on account of some mistake or error apparent on the face of the record or existence of sufficient reason for the Applicant’s sentence to be varied, set aside or substituted with another sentence. The aims of sentencing are clearly not identical with the aims of the criminal law itself. Sentencing is the stage after the imposition of criminal liability, and may be characterized as a public judicial judgment of the degree to which the offender may rightly be ordered to suffer legal punishment. The conviction establishes that the offender may be subjected to judicial sentencing, within the applicable limits, and so sentencing decisions are concerned with the degree of condemnation and with the form of the sentence.
7. This briefing note focuses on the issue of judicial discretion in relation to sentencing. For this purpose, the application for review of sentence has not met the criterion set out in the *Bernard Gacheru Kimani* case (*Supra*). The effect of it and the view taken by this Court is to dismiss the application pursuant to Section 382 of the Criminal Procedure Code.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET THIS 3<sup>RD</sup> DAY OF SEPTEMBER 2025.**

.....

**R. NYAKUNDI**

**JUDGE**

