



REPUBLIC OF KENYA



KENYA LAW
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**Kipchirchir v Republic (Criminal Revision E040 of 2025)
[2025] KEHC 12335 (KLR) (3 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12335 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E040 OF 2025
RN NYAKUNDI, J
SEPTEMBER 3, 2025**

BETWEEN

IAN KIPCHIRCHIR APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Ian Kipchirchir was charged with the offence of Stealing motor cycle contrary to Section 287(A) of the Penal Code as read with Section 275 of the Penal Code.
2. The brief facts of the particulars are that on the 28th day of March 2023 at around 0800hrs at Moi University Talai Stage, within Uasin Gishu County, stole a motor cycle make TVS 100CC Red in Colour Reg. No. KMFN 757K valued at Ksh 80,000 the property of Mathews Kiprotich.
3. The applicant initially denied the offence but later entered a plea of guilty in which he was convicted and sentenced to a fine of Ksh 70,000/= in default one-year imprisonment on the 3rd of December 2024.
4. He approached this court to have the sentence reviewed under Section 362 and 364 of the Criminal Procedure Code.

Decision

5. The sentencing scheme in Kenya is based on what parliament has prescribed as the minimum or maximum penalty for the offence. The Magistrates and Judges in Kenya do not have Cad Carte blanche to impose any sanction they deem fit. Therefore, they are of course bound by precedent sentences imposed which must conform with those that have come before. However, given the sheer number of sentencing decisions handed down on a daily basis across the country, relying on general precedent alone is a daunting task. That is why I think even with the existence of the sentencing tools like the



Judiciary Sentencing Policy Guidelines, Judicial Precedents and what Parliament has prescribed as punishment in the various penal laws it sometimes seems naïve in retrospect for one to have expected anything more than the inconsistency being experienced in our sentencing regime. Although guideline judgments are intended to achieve consistency particularly those from the Superior Courts, but still in terms of practicability there is still need to be flexible enough not to circumscribe the discretion of the sentencing Judge or Magistrate.

6. In so far as the review of sentence is concerned on appeal or revision the law is settled on what to take into account as illustrated by the Court of Appeal in *Benard Kimani Gacheru v Republic* [2002] eKLR:

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial Court. Similarly, sentence must depend on the facts of each case. on appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already states is shown to exist.”

7. As one who has been involved in adjudicating criminal cases in our jurisdiction, I have come to appreciate what the learned Author Hall on sentencing as one remarked that sentencing is not a rational mechanical process, it is a human process and subject to all other frailties of the human mind. A wide variety of factors including the Judge’s background, experience, social values, moral outlook, penal philosophy and views as to the merits or demerits of a particular penalty influence the sentencing decision.
8. In this instant application, I am being asked to review the sentence in terms of Article 50 (2) (p) and (q) of *the Constitution* as read with Section 362 and 364 of the Criminal Procedure Code. It is also true that in our jurisdiction the trial Magistrate has the primary discretion to individualize sentences unless the significant law provides for mandatory sentences. Therefore, placing sentencing discretion in the hands of an Appeal Court the Applicant must meet the threshold set out in the *Benard Kimani Case* (Supra). As for the Applicant from the record there is no clear evidence to fault the sentence imposed by the trial court. The application therefore is dismissed for want of merit under Section 382 of the Criminal Procedure Code.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET THIS 3RD DAY OF SEPTEMBER 2025.

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R. NYAKUNDI

JUDGE

