



**Kipkorir v Republic (Revision Case E472 of 2024)
[2025] KEHC 12373 (KLR) (3 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12373 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
REVISION CASE E472 OF 2024
RN NYAKUNDI, J
SEPTEMBER 3, 2025**

BETWEEN

BRIAN KIPKORIR ACCUSED

AND

REPUBLIC PROSECUTION

RULING

1. The Accused person was charged with an offence of stealing contrary to Section 268(1) as read with Section 275 of the Penal Code. The brief facts are that on 16th day of February 2023 at unknown time at Annex area in Kapseret sub-county within Uasin Gishu County stole one motor cycle registration number KMGH 107X make TVS 125CC valued at Kshs 142,690/= the property of Sheila Jeptanui Kiprotich
2. The Applicant was tried, found guilty, convicted and sentenced to a fine of 100,000 in default 2 years imprisonment. He has approached this court under Article 165 (6) & (7) of *the constitution* and Section 362 read together with Section 364 of the CPC to have his sentence reviewed. By extension he is seeking compassion and mercy from this court. What does the law say on the principle of mercy with regard to sentencing? “ Mercy in sentencing is not unlike equity in that it claims to supersede the justice offered by law by virtue of its superior sanctity. While sentencing is governed by the intellect, the emotions also have their property part to play. This includes pity for the offender as well as revulsion. If mercy does no more than assist in determining the weight to be given to particular accepted mitigating factors, it is simply working within the existing sentencing system. But when judges and magistrates, in response to their feelings of compassion, offer leniency to offenders on the basis of condition that are generally regarded as irrelevant to sentence, mercy, like equity, is serving in independent function in sentencing. It gives voice to humanitarian consideration which are apparently still lacking within the systems. For Brien, who strongly supports this role mercy is not merely a characteristic of particular action but also of juridical officers and the culture of the law



3. Through its relationship to discretion and the place of discretion within the legal system, mercy is essential to the functioning and workability of the law, and more generally, to the culture of the law. No theory of law, therefore, can be adequate without an account of mercy, both as a particular action and as a virtue of the system's officials, Not only has mercy a place within legal justice, but it must be maintained as a possibility and actively promoted, if the law is to operate in a morally acceptable manner and carry out the various function that it has in our social arrangements. Therefore, rather than being in tension with the law as a system, mercy is an essential component of it
4. In practical sense trying a case is as easy as falling off a log. The difficult comes in knowing what to do with an accused once he or she has been found guilty. (see Irish Judicial Studies Journal Vo. 3 2019) that is in my review why the Court of Appeal had this to say in the Benard 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 fact of each case. On appeal, the appellate court will not easily interfere with sentence unless, the sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factors, or took into account some wrong material, or acted on a wrong principle. Even if 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 show to exist.:
5. The court in S v Xaba 2005 SACR 435 (SCA) para 15 made the following observations: “ It is necessary and instructive to make a rough comparison between sentences arising out of the same factual matrix or circumstances and those that other courts have found appropriate. It has often been pointed out that no two cases are alike and this is self-evidently true, but the fact remains that courts must strive for some consistency in punishment and where sentence is extravagantly high an appeal court becomes entitled to interfere with it. How does one determine the length or severity of a sentence” The right to equal treatment before the law, in our Art. 27 of *the constitution* has not really received much attention in our sentencing law. It is sometimes very difficult for the public to appreciate the process of a sentencing court translating the guilty of an accused person into several years in custody whereas, other accused persons charged with the same offence receive less years of custodial sentences. This is a debate which we must have to bridge the gap of inconsistency and disparity in sentencing in our Republic.
6. For this case the Applicant has not met the threshold to review his sentence and the application is therefore dismissed for want of merit

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 3RD DAY OF SEPTEMBER 2025

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R. NYAKUNDI
JUDGE

