



**Maina & another v Republic (Criminal Revision E066 of 2025)
[2025] KEHC 12394 (KLR) (3 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12394 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E066 OF 2025
RN NYAKUNDI, J
SEPTEMBER 3, 2025**

BETWEEN

GEOFFREY MAINA 1ST APPLICANT

KELVINE OWEN 2ND APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of burglary contrary to section 301(4) as read with section 304(2) of the Penal Code. The brief facts are on the 9th day of September 2023, at around 2100hrs at Kipkaren estate in Kapseret sub-county, within Uasin Gishu County, jointly broke and entered into a dwelling house of Diana Kiprotich with intent to commit a felon there in namely stealing and did not steal from therein two 6kg cylinder gases make k-gas and oilibya, 2 suits cases containing assorted clothes all valued approximately Kshs. 60,000/= property of the said Diana Kiprotich
2. The two applicants were tried, found guilty, and convicted for the respective offences and ultimately sentenced to serve as follows; the 1st accused Goefrey Maina was sentenced to a fine of 30,000/= in default 1-year imprisonment, whereas Kelvin Owen was also sentenced to a fine of 30,000/= in default 1-year imprisonment.

Decision

3. The matter was placed before this court for purposes of reviewing the sentence. In so far as judicial discretion is concerned it is well established that sentencing remains pre-eminently within the discretion of the sentencing court. This salutary principle implies that the appeal court does not enjoy carte blanche to interfere with sentences which have been properly imposed by a sentencing court. In



my view, this includes the terms and conditions imposed by a sentencing court on how or when the sentence is to be served.

4. In the same subject matter, the court in *Shadrack Kipkoech v R. Eldoret Criminal Appeal No. 253 of 2003* the court held that:

“Sentencing is essentially an exercise of discretion by the trial court and for this court to interfere it must be shown that in passing the sentence, the sentencing court took into account an irrelevant factor or that a wrong principle was applied or that short of these, the sentence itself is so excessive and therefore an error of principle must be interfered.”

5. The Kenya courts, when presiding over criminal cases within our criminal justice system, have never regarded the process of sentencing as amenable to a rigid algorithmic or mathematical approach. Instead, they have always recognized that each sentence must be individualized. In determining the overall weight to be afforded to factors at either stage of the sentencing process whether in assessing the gravity of the offence or in affording a discount for mitigation—the sentencing judge relies on professional experience, intuition, and subjective judgment. The judge then arrives at an appropriate sentence through what academic literature on sentencing refers to as “instinctive synthesis.” Accordingly, the sentencing judge must be afforded a significant margin of discretion in exercising this role.

6. The court in *R v Fanguna [2009] NZCA 316* which we share a common law heritage noted that:

“It is vital that sentencing is approached in the systematic way mandated by this Court in *R v Taueki*. It is important to do so for at least three reasons. First, the offender and the community are entitled to know the reasoning process by which the Judge arrives at a sentence. Secondly, the systematic approach required is designed to ensure that similar starting points and discounts for factors such as a guilty plea are adopted in similar cases in order to promote consistency in sentencing. Thirdly, the failure to articulate starting points and departures therefrom makes it very difficult for the appellate court to identify the weight the Judge regarded as appropriate for the various factors including the discount for a guilty plea and any other mitigating factors. In such cases, the Court is obliged to form its own assessment without the assistance of the view of the sentencing Judge.”

7. In the instant case, the process of sentencing by the trial court has been examined and reviewed and there is no probative evidence that judicial discretion was exercised wrongly or in contravention of the Sentencing Policy Guidelines or the penal provisions enacted by Parliament. The application for review of sentence is therefore dismissed as it is not tainted with illegality, irregularity, or impropriety. Orders accordingly.

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

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R. NYAKUNDI
JUDGE

