

KENYA / JUDGMENT

Republic v Nyambeka

[2026] KEMC 864 (KLR)

[2026] KEMC 864 (KLR)

COURT

Magistrate's Court

CASE / FILE NUMBER

Criminal Case E265 of 2026

Source: new.kenyalaw.org · Research copy typeset by Esheria. Not court-issued or certified.

REPUBLIC OF KENYA IN THE SENIOR PRINCIPAL MAGISTRATE'S COURT OF KENYA AT
MALABA CRIMINAL CASE NO. E265 OF 2026

REPUBLIC.....PROSECUTOR VERSUS SAMMY
NYAMBEKA..... ACCUSED PERSON RULING ON SENTENCE. The
accused person was charged with the offence of breaking into a building and committing a felony
contrary to section 304(1)(b) of the Penal Code. He was charged on 2nd June 2026 and pleaded
guilty to the charge. Upon conviction, the Court called for a pre-sentence report to assist it in
determining an appropriate sentence. In mitigation, the accused pleaded for leniency. He stated
that the complainant is his uncle and that there is an existing disagreement between them
concerning inheritance. He expressed willingness to reconcile with the complainant. The Court
has considered these mitigating circumstances, including the fact that the accused pleaded guilty
at the earliest opportunity, thereby saving judicial time and sparing the complainant and
witnesses the burden of a trial. The prosecution informed the Court that the accused had
previous court records. The Court has, however, established that the matter referred to, being
Criminal Case No. E593 of 2025, was withdrawn under Section 87(A) of the Criminal Procedure
Code after the accused had absconded court and the cash bail was forfeited. The said matter did
not result in a conviction. It would therefore be improper for this Court to treat it as a previous
conviction or criminal record for purposes of aggravating sentence. The Court may, however,
take note of the accused's previous failure to attend court as relevant conduct when considering
his suitability for a non-custodial sentence. The Court has further considered the pre-sentence
report. Of particular significance is the variance between the accused's position before this
Court, where he expressed willingness to reconcile with the complainant, and the information
contained in the report indicating that he was not willing to reconcile. The Court therefore finds
that the prospect of immediate reconciliation and successful rehabilitation within the
community is not sufficiently demonstrated. Ruling Criminal Case No. E265 of 2026 Hon. A.Z
Ogange-R.M pg. 1 The Court summoned the complainant following the report in order to afford
him an opportunity to shed further light on the circumstances surrounding the offence and the
relationship between the parties. The complainant, however, failed to attend Court. The Court
has therefore considered the information available in arriving at its determination. The report

further indicates that the accused's conduct is attributed consumption of illicit brew. The report also records several complaints concerning the accused as reported by the area Chief. While such complaints cannot be treated as previous convictions, they are relevant to the assessment of the accused's suitability for a non-custodial sentence, particularly when considered together with the other circumstances disclosed in the pre-sentence report. The offence itself is serious. The accused unlawfully broke into a building and stole, among other items, four Sufuria, two bicycles and half a sack of charcoal. The offence involved an invasion of the complainant's property which items were recovered from third parties who the accused person had negotiated with and received part payment with regard to the items thereof. The fact that the complainant is the accused's uncle and that there is an inheritance dispute does not excuse the criminal conduct. Disputes concerning property or inheritance must be resolved through lawful means and cannot justify breaking into a building and stealing. The Court is guided by the Sentencing Policy Guidelines, which require consideration of the gravity of the offence, the offender's criminal history, the circumstances of the offence and the suitability of a non-custodial sentence. The Guidelines also recognise that imprisonment should ordinarily be avoided where a sentence of less than three years would otherwise be appropriate, unless circumstances render a non-custodial sentence unsuitable. Having weighed the mitigating factors including the early plea of guilty and recovery of the stolen items, against the aggravating circumstances, including the attempt to sell stolen items and receipt of part payment, the pre-sentence report, the Court finds that the circumstances cumulatively render a non-custodial sentence unsuitable. Having further considered that the matter involves property offences without violence being alleged and mitigation of the accused person, it is the finding of the court that a two-year custodial sentence is just in the circumstances. The sentence shall run from 2nd June 2026 when the accused person was remanded in custody Orders accordingly. 14days Right of Appeal. Exhibits shall be released to the Complainant. Ruling Criminal Case No. E265 of 2026 Hon. A.Z Ogange-R.M pg. 2 RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT MALABA SENIOR PRINCIPAL MAGISTRATES COURT THIS 3RD DAY OF SEPTEMBER, 2026. In the Presence of Sammy Nyambeka the Accused Person present in Person Mr. Rotich- Prosecution Counsel Court Assistant: Paul Otieno A.Z. OGANGE RESIDENT MAGISTRATE 03.09.2026 Ruling Criminal Case No. E265 of 2026 Hon. A.Z Ogange-R.M pg. 3

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://new.kenyalaw.org/akn/ke/judgment/kemc/2026/864>

CASE PAGE <https://chat.esheria.ai/case-law/kenya/republic-v-sammy-nyambeka-2026>

Prepared on 29 October 2026 · Esheria