



**Ngeny v Republic (Miscellaneous Criminal Application E062 of 2023)  
[2024] KEHC 14893 (KLR) (28 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14893 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
MISCELLANEOUS CRIMINAL APPLICATION E062 OF 2023**

**JK SERGON, J**

**NOVEMBER 28, 2024**

**BETWEEN**

**ROBERT KIPNGETICH NGENY ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant was charged and convicted for the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code *vide High Court Criminal Case No. 17 of 2015* and sentenced to serve 20 years imprisonment. The Applicant did not appeal to the Court of Appeal.
2. The Applicant filed this application for sentence review. The Applicant stated that this court has the jurisdiction to hear and determine the application under article 165 (3) (b) of the Constitution of Kenya, 2010.
3. The Applicant stated the sentence imposed was harsh and excessive in light of the fact and circumstances of the case and therefore urged this Court to review the sentence and substitute it with a probation order or community service order in the interest of justice. The Applicant urged this Court to award him a lenient sentence under article 50 (2) (p) (q) of the Constitution of Kenya, 2010.
4. The Application came up for inter partes hearing the applicant reiterated that this Court has the jurisdiction to review the sentence and substitute the sentence with a probation order.
5. The prosecution did not oppose the said Application and stated that the objective of sentencing is to rehabilitate and the convict can be placed under a community service order in furtherance of the objectives of sentencing and to decongest the prison.
6. This court has carefully studied the typed proceedings and finds that this court during sentencing considered the fact that the offence of manslaughter attracts a maximum sentence of life imprisonment.



7. The sentencing court considered the findings of the social inquiry report which was not favourable for a non-custodial sentence and thereby exercised its discretion and directed that the applicant be sentenced to 20 years imprisonment.
8. In the case of *Fatuma Hassan Salo vs Republic* (2006) eKLR, though persuasive Makhandia, J asserted that: “Sentencing is a matter for the discretion of the trial court. The discretion must however, be exercised judicially. The trial court must be guided by evidence and sound legal principle. It must take into account all relevant factors and exclude all extraneous or irrelevant factors. In the absence of detailed sentencing notes, it is not possible to tell what went on in the mind of the trial Court in arriving at the sentence imposed. It is possible that it may have taken into account extraneous or irrelevant factors. It is also possible that it may have taken into account relevant factors and exercised its discretion judicially. That being the case, I would give the benefit of doubt created to the Appellant.”
9. In the instant matter this court had the benefit of reviewing the sentencing notes and finds that there is no good reason to warrant this court interfere with the sentence meted out on the applicant.
10. The application herein lacks in merit, the same is hereby dismissed.

**DATED, SIGNED AND DELIVERED AT KERICHO THIS 28<sup>TH</sup> DAY OF NOVEMBER, 2024.**

.....

**J.K. SERGON**

**JUDGE**

In the presence of:

Mr. Musyoki – Prosecutor

Mr. Langat – C/Assistant

Applicant – Present in Person

