



**Nyokabi v Republic (Criminal Miscellaneous Application
E002 of 2025) [2025] KEHC 3071 (KLR) (17 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3071 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CRIMINAL MISCELLANEOUS APPLICATION E002 OF 2025**

LN MUTENDE, J

MARCH 17, 2025

BETWEEN

PETER MUNGAI NYOKABI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Peter Mungai Nyokabi, was charged with the offence of creating disturbance in a manner likely to cause a breach of the peace contrary to Section 95(1) (b) of the [Penal Code](#). Particulars being that on the 24th day of April, 2023 at around 1800hrs at Nyumba Tatu location within Nyandarua County, he created disturbance in a manner likely to cause a breach of the peace by throwing stones at Dorcas Njoki Mungai's house while claiming that he would burn the said house.
2. He pleaded guilty at the onset, was convicted and sentenced to serve 8 years imprisonment, on 28th April, 2023.
3. Through an application dated 21st January, 2025. The Applicant seeks to mitigate on sentence. The basis of the mitigation is that he has served sentence of two (2) years imprisonment. He was deployed to the building section where he has acquired masonry skills.
4. That he is 26 years old and he promises to be a good ambassador against alcoholic substances and drugs a factor that had him commit the offence.
5. I have considered the application and affidavit in support; and the response by the State/Respondent through learned prosecution counsel, Mr. Obutu, who has opposed vehemently review of sentence.
6. The Applicant contravened provisions of Section 95(1) (b) that enacts thus;
 - (1) Any person who—



(b) brawls or in any other manner creates a disturbance in such a manner as is likely to cause a breach of the peace,

is guilty of a misdemeanour and is liable to imprisonment for six months.

7. Sentencing is the discretion of the trial court but an appellate court will interfere if the sentence is premised in wrong principles, in excessive or harsh. In *Ogolla s/o Owour v Republic* (1954) EACA 270 it was stated that;

“The Court does not alter a sentence unless the trial Judge has acted upon wrong principles or overlooked some material factors.”

8. The sentence imposed herein was illegal as the learned trial magistrate overlooked the law. In the premises the application is allowed. The Applicant who has served the sentence provided for in law shall be released forthwith unless as otherwise lawfully held.

9. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 17TH DAY OF MARCH, 2025.

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L.N. MUTENDE

JUDGE

