



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Bernard v Republic (Criminal Revision E002 of 2025)  
[2025] KEHC 6496 (KLR) (Crim) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6496 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ISIOLO  
CRIMINAL  
CRIMINAL REVISION E002 OF 2025  
SC CHIRCHIR, J  
MAY 22, 2025**

**BETWEEN**

**MUPENZI BERNARD ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant herein was charged with the offence of being unlawfully present in Kenya, contrary to Section 53(1) as read with section 53(2) of *Kenyan Citizenship and Immigration Act* of 2011. He was convicted on his own plea, and was sentenced to a fine of Kshs.200,000 or 4 months imprisonment, in default of the fine.
2. He has now brought this Application seeking for a review of sentence meted out by the trial court.
3. It is the Applicant's submission that he is remorseful, a first offender and he pleaded guilty at the first instance. That the fine of Kshs. 200,000 was therefore too excessive.
4. He has further stated that he suffers from a duodenal ulcer and liver problems, and is not able to get nutritional provisions that would manage his condition.
5. The application is opposed. The Respondent's counsel states that the applicant was given chance to mitigate, and the trial court considered his mitigation; that against the prescribed fine of maximum of Kshs. 500,000 or imprisonment not exceeding 3 years, the trial court's sentence was too lenient.
6. It is further stated that the Applicant has not demonstrated that the trial court acted on wrong principles; that sentencing is an act of discretion which can only be interfered with on certain specified grounds. In this regard the respondent has relied on the case of *Shadrack Kipchoge Kogo v Republic*. Eldoret Criminal Appeal No. 25 of 2003 by the Court of Appeal.



## Determination

7. Section 362 to 367, of the *Criminal Procedure* court sets out the grounds and scope of the Revision Powers of the High Court. Section 362 provides as follows:

“The high court may call for and examine the record of Criminal Proceedings before any subordinate court for purposes of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to proceedings of any such subordinate court”. (Emphasis added)

8. The Applicant’s plea herein is that the fine of Kshs. 200,000- or 4-months imprisonment in default was excessive.

9. It is trite law that sentencing is an act of discretion by the trial court and on Appellant (or Revision court in this case) can only interfere if the discretion is exercised wrongly.

10. In the case of *Shadrack Kipchoge Kogo v Republic* (Eldoret Criminal Appeal No. --- of 2003), Omolo, O’Kubaso & Onyango JJA) cited by the respondent, the court held:

“Sentencing is essentially on exercise of the trial court and for the court to interfere, it must be shown that in passing the sentence, the court took into account an irrelevant factor or that a wrong principle applied or short of these, the sentence were so harsh and excessive that an error in principle must be inferred”

11. Section 53 (1) (J) and 53 (2) of the *Kenya Citizenship and Immigration Act* under which the Applicant herein was judged provide for a fine of not exceeding Kshs. 500,000 or to imprisonment for a term not exceeding 3 years or both.

12. In the present case, the court gave the Applicant a fine of Kshs. 200,000 or 4 months in default. The court opted not to go for both a fine and imprisonment. Therefore, considered against the provisions of Section 53(2) of aforesaid *Kenya citizenship and immigration Act* the Applicant escaped with quite lenient a sentence. His complaint that he was given excessive sentence has no merit.

13. In conclusion, in terms of Section 362 of the *Criminal Procedure Code*, I do not find any incorrectness, illegality or impropriety on the sentence passed by the trial court to warrant any intervention by this court.

14. The application is hereby dismissed.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT ISIOLO THIS 22<sup>ND</sup> DAY OF MAY, 2025**

**S CHIRCHIR**

**JUDGE**

In the presence of:

Roba Katelo- Court Assistant

Mupenzi Bernard- Applicant.

