



**Egesimba v Republic (Criminal Revision E066 of 2025)
[2025] KEHC 8200 (KLR) (Crim) (26 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 8200 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION E066 OF 2025
MW MUIGAI, J
MAY 26, 2025**

BETWEEN

NNAMBI EGESIMBA APPELLANT

AND

REPUBLIC REPUBLIC

RULING

Background

1. On 3/4/2025 Presiding Judge of Criminal Division referred the instant Application to this Court as per the attached letter from the Applicant to the Chairperson of Community Service Orders (CSO) one of the methods of addressing decongestion in Prisons and /or provide restoration, rehabilitation and reparation through public works.
2. On 7/4/2025 this Court upon perusal of the said letter dated 26/3/2025 by the Applicant for consideration of revision under the CSO. The Applicant Nnamdi Egesimba, a Nigerian citizen was arrested on 25th November 2016 and was convicted of trafficking narcotics on 16/7/2018 in Criminal Case 149/2016 for 15 years imprisonment and Ksh 18 million in default to serve 1 year imprisonment.
3. The Applicant deposed that he has now served 8 years and after deduction of remission he is left with 3 years imprisonment to complete the sentence. The Applicant therefore requests to be considered for release under the prison decongestion exercise. He is remorseful and he has undergone Basic Counselling & Criminology Skills, Peer Counselling Skills Training, Bible Correspondence and Course Paralegal Training and attached copies of Certificates of completion.
4. He deposed that he is unwell, he developed health issues and his health is deteriorating and seeks non-custodial sentence for remaining 3 years or to be placed on CSO and/or repatriated back to his country and family.



5. On 7/4/2025, this Court sought the Application be served to ODPP/Prosecution who may respond to the Application; the Deputy Registrar to retrieve the original file criminal case 149/2016 and open a Prison/Decongestion file; the Probation/Community Service Officer to provide a Resentencing Report and the Applicant to provide medical reports.
6. On 19/5/2025, the ODPP represented by Mr. Mwandawiro made oral Application that the Applicant appeared in the High Court for resentencing as the 4th time and provided Rulings by the High Court on the same issue.
 - a. High Court Misc Criminal App 237 of 2021 *Egesimba & Anor vs Republic* before Hon JM Bwononga J who noted that upon conviction and sentence in Criminal case 149 of 2016 the Applicant and Another appealed to the High Court Criminal appeal 128 & 129 of 2018. On 10/7/2019, Hon. L.Kimaru dismissed appeal on conviction and sentence. They filed appeal in Court of Appeal 153 of 2019. On 4/12/2020 Hon Koome JA, (as she then was) Musinga JA & Sichale JA dismissed appeal and upheld conviction and sentence.

Bwononga J held that Superior Courts cannot sit in review/appeal of decisions of peers of equal and competent jurisdiction, much less those Courts higher than themselves. The current sentence was already affirmed by Court of Appeal, a Court of higher status....

The upshot is that this Court is functus officio and hence bereft of jurisdiction to review sentence.
 - b. High Court at Kibera Criminal Revision 105 of 2023 *Egesimba & Anor vs Republic*, Hon D. Kavedza LJ noted the matter was handled by the Court of appeal and was before the High Court thereafter, before Hon. Bwononga J and held to venture into handling the matter on merit, it would be tantamount to disregard for hierarchy of Courts. This Court has no jurisdiction to supervise a Superior Court.
 - c. High Court at Kibera Criminal Revision 284 of 2024 *Egesimba & Anor vs Republic*, Hon D. Kavedza LJ noted that the file was opened with regard to suitability of sentence review in the spirit of prison decongestion pursuant to the Hon. Chief Justice's Memo dated 7/12/2022. The Court noted , the Applicant only served 8 years of the sentence, there was no record from Prisons to show that he remained with 3 years only to serve. There was no incorrectness or irregularity in the sentence. The application was dismissed.
7. From the above chronology of events, the instant application is confirmed as 4th Application by the Applicant to the High Court and this time revision of sentence under CSO.
8. To the Application attached is Recommendation from Officer in Charge Makueni Prison dated 13/3/2025, that the Applicant was sentenced to 16 years and he has served 8 years and remission as per Prison Regulation and computation he is awarded 5 years and 4 months. The convict was arrested on 25/11/2016 and the presentence period in custody was not taken into account as provided by [Section 333(2) *CPC*] and while in prison, the Applicant has been of good conduct and undertaken the rehabilitation programs and vocational training.
9. The Resentencing Report of 22/4/2025 detailed The Applicant's family in Nigeria [who could not be reached] as from interview conducted through video-link. Prison assessment, the Applicant had undergone rehabilitation. Applicant's attitude, the term so far served he had reformed. The recommendation was that his case was /is suitable for review but he has no fixed abode except girlfriend's place in Rongai. The applicant also requested to be repatriated back to Nigeria.
10. [Community Service Orders Act](#)



Section 3. Community service orders

- (1) Where any person is convicted of an offence punishable with—
 - (a) Imprisonment for a term not exceeding three years, with or without the option of a fine; or
 - (b) Imprisonment for a term exceeding three years but for which the court determines a term of imprisonment for three years or less, with or without the option of a fine, to be appropriate, the court may, subject to this Act, make a community service order requiring the offender to perform community service.

11. Case Law On Community Service Order

In the case of Gilbert Mwangi Kiai v Republic [2017] eKLR, Hon T.Matheka LJ observed that:

“The Community Service Order is therefore not meant to be an easy way out of a serious sentence. It is the sentence that ensures that an offender serves his sentence within his or her community, while going on with his or her normal life. It is a path to complete reintegration of an offender, who may even have committed a serious offence and who is on the way to recovery. It is the one sentence that is expected to grow the trust of the Mwananchi that the Criminal Justice System works. That is why the offender is to do public work, in the eyes of the community he offended, as a form of payback, for the benefit of the community, while benefitting from its non-custodial nature. It is a serious sentence and must be accorded its place, because in addition it saves tax payers the money spent incarcerating offenders, reducing contamination by serious offenders and congestion in the prison.....”

12. In the case of Margaret Njeri Kipchilis v Republic [2017] eKLR, Hon.Murithi J opined that:

“17. In the respectful view of this court, to take away the parent who was discharging the parental care and protection duties of Article 53 (1) (e) of the Constitution cannot be in the best interest of the child. I consider that had the trial court considered the interests of the children and the blameworthiness of the appellant for the incident the subject of the criminal offence, it would have reached a different decision in the interests of the children to allow the appellant to continue to provide as best she can for their children. On this ground, I consider that the appellate court is entitled to interfere with the sentence by altering the nature of the sentence so that the appellant may serve the remainder of her two-year sentence under a Community Service Order pursuant to section 3 (1) (b) of the Community Service Orders Act.....”

13. In the case of Jonathan Kasaine Mbutu & another v Republic [2014] eKLR Hon L Mutende LJ stated that:

“The offender was charged with stealing decoration flowers valued at Kshs. 2000/=. He pleaded guilty right at the outset and was sentenced accordingly.

Having been interviewed by the Community Service Officer/Probation Officer, it was found that he had no fixed abode therefore it would be difficult to supervise him. He was taken back to court on the 11th October, 2014. The court sentenced him to pay a fine of Kshs. 2000/= or serve fourteen days imprisonment in default.



Ordinarily, a court of law would require a Community Service Officer to file a report following an inquiry carried out prior to making a community service order. The offender expected to perform community service must inform the court if he is willing to perform the community service as an alternative to imprisonment (See Section 4 of the [Community Service Orders Act](#)).

It is mandatory for a court making the order to be specific as to the actual placement and conditions upon which the offender is to serve. (See Section 6 of the [Community Service Orders Act](#)).....

14. From the above legal provision and case-law,
Community service is one form of punishment provided in Section 24 of the [Penal Code](#) and thus implemented in the Criminal Justice system as provided in the Act.
15. The CSO program is mainly focused on and implemented in the case of Petty offenders' upto 6 months- 1 year imprisonment, 1st offenders and those sentenced to offences providing for up to 3 years imprisonment that is misdemeanors who have demonstrated remorse, rehabilitation and restoration to warrant a 2nd chance to reintegrate into society after reparation through public work under CSO and also decongest Prisons.
16. Section 3 of the [Community Services Orders Act](#) prescribes Community Service even where the sentence exceeds 3 years imprisonment with or without a fine that it is appropriate for Community service.
17. In the instant case, the Applicant pursued appeals from the Trial Court to the High Court and later to the Court of Appeal which upheld both conviction and sentence. This Court lacks competent jurisdiction to interfere with the Court of Appeal decision that is binding to this Court. The determination on sentence was/is by a higher Court.
18. Secondly, for placement of Community service order, a proper inquiry into the Offender's circumstances must be made and recorded by Probation/Community Service Officer; whether the Offender has fixed residence/abode; He/she has obligations taking care of children /elderly or persons with disability; he/she is employed, working hours and profession/skills; he/she is a 1st Offender, the distance from the nearest Community service Institution from Offender's home; Status, health and age of offender and the nature of the work available and the offender is willing to perform the public work. [[Criminal Procedure Bench book 2018](#)]
19. The Resentence Report by Probation Officer indicated the Applicant has no fixed abode and could reach/interview his family and the Applicant preferred to be repatriated back to Nigeria.
20. On Section 333(2) [CPC](#), this Court unable to verify and confirm the period in remand during Applicant's trial and Pre-Sentence as the Trial Court File was not availed despite several orders by Deputy Registrar Criminal Division.
21. On health consideration, the Applicant did not provide any medical report treatment notes.

Disposition

22. Therefore, due to the fact that this Court lacks jurisdiction and is functus officio on this matter as demonstrated above and that CSO would not an appropriate option, the Applicant's application is hereby denied.

**RULING DELIVERED SIGNED & DATED IN OPEN COURT IN NAIROBI HIGH COURT
CRIMINAL DIVISION ON 26/5/2025**



M.W. MUIGAI
JUDGE

