



**Isiongo v Republic (Criminal Review E072 of 2025)  
[2025] KEHC 6118 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6118 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVIEW E072 OF 2025  
RN NYAKUNDI, J  
MAY 15, 2025**

**BETWEEN**

**ALPHAEUS MADASYO ISIONGO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant herein was charged with an offence of making a document without authority contrary to section 357(a) of the *Penal Code*. The particulars of the offence are that on diverse dates between 1<sup>st</sup> and 30<sup>th</sup> July 2008 at Eldoret Township in Uasin Gishu District within Rift Valley Province, jointly with others not before court, with intent to deceive without lawful authority or excuse made a certain document namely title deed ELDORETR MUNICIPALITY BLOCK 27/2499 purporting to be a title deed issued by Registrar of Lands, Uasin Gishu District.
2. The Appeal of this Applicant was determined on 25.1.2024 on both conviction and sentence. He has now approached this court that the balance of 6month period be served in the home based rehabilitation. The probation officer’s report contents as follows: The inmate is the last born in a family of twelve siblings and is married to Mrs. Madasyo who is battling with old age. He is blessed with three children who are all grown-ups leading independent lives. He does not take alcohol or abuse drugs. His children visited him while in prison and the wife is ready to receive and support him upon release. He worked in the kitchen while in prison until the time he was dragonized to be unwell. The inmate has learned the consequences of breaking the law. He is optimistic about early released and states that the sentence has impacted his behavior positively. He hopes to be released early so he can reunite with his family and continue with his medication. The inmate is a 75 year old man of three children who has served 16 months prison sentence for the offence of forgery. He prays that he is considered for non-custodial sentence so that he can re-unite with is family and continue with his medication while



-serving the remaining sentence. The community is receptive of him and has no objection towards his early release

3. In determining this question on review of sentence, I bear in mind the sentencing policy guidelines of the judiciary 2023, the provisions of Article 50 2(P) (Q), 6(A) & (B) of *the constitution* as construed with Section 357, 362, & 364 of the CPC. In essence sentencing principles and objectives lay emphasis on the doctrine of proportionality while exercising discretion to impose a particular term of imprisonment, life imprisonment, or in any event the rarest of them all being the death penalty. On proportionality I am guided by the persuasive decision in the case of S v Dodo 2001(3) SA 382 in which the court made the following observations. “The concept of proportionality goes to the heart of the inquiry as to whether punishment is cruel, inhuman or degrading, particularly where, as here, it is almost exclusively the length of time for which an offender is sentenced that is in issue.... Section 12(1) (a) [of *the Constitution* of the Republic of South Africa] guarantees, amongst others, the right “not to be deprived of freedom... without just cause”. The “cause” justifying penal incarceration and thus the deprivation of the offender’s freedom is the offence committed. “Offence”, as used throughout in the present context, consists of all factors relevant to the nature and seriousness of the criminal act itself, as well as all relevant personal and other circumstances relating to the offender which could have a bearing on the seriousness of the offence and the culpability of the offender. In order to justify the deprivation of an offender’s freedom it must be shown that it is reasonably necessary to curb the offence and punish the offender. Thus the length of punishment must be proportionate to the offence. To attempt to justify any period of penal incarceration, let alone imprisonment for life as in the present case, without inquiring into the proportionality between the offence and the period of imprisonment, is to ignore, if not to deny, that which lies at the very heart Human beings are not commodities to which a price can be attached; they are creatures with inherent and infinite worth; they ought to be treated as ends in themselves, never merely as means to an end. Where the length of a sentence, which has been imposed because of its general deterrent effect on others, bears no relation to the gravity of the offence ..., the offender is being used essentially as a means to another end and the offender’s dignity assailed. So too where the reformatory effect of the punishment is predominant and the offender sentenced to lengthy imprisonment, principally because he cannot be reformed in a shorter period, but the length of imprisonment bears no relationship to what the committed offence merits. Even in the absence of such features, mere disproportionality between the offence and the period of imprisonment would also tend to treat the offender as a means to an end, thereby denying the offender’s humanity.’
4. The above principles informs us that the principles and objectives of sentencing non carries more weight than the other for it all depends on individual circumstances of each case. This is what was being restated by the judicial sentencing expert Shain Posits the following on this principles. “Rehabilitation manifestly constitutes one of the important goals or purpose of punishment. As a society we would like the correctional experience to be beneficial and hope that it will bring the offender to his(or her) senses and act to reserialize and rehabilitate him. After all, punishment alone is not enough. If every convicted offender sentenced by a judge, irrespective of the nation in which the criminal proceedings took place, was deterred from further offences and emerged a more socially responsible person then, the criminal law would indeed have fulfilled its purpose. But unfortunately, this outcome is not always the case.
5. As highlighted above, and the recommendations made by the Probation Officer, I am of the view that the victim would not suffer prejudice or injustice if the Applicant is released to complete the remainder of his period of six month within the framework of being under the supervision of the Probation Officer. If anything, he must have learnt his lessons upon retrospection and reflection during the period he has been serving the custodial sentence for the last sixteen (16) months. The victim may be at liberty to sue for compensation in a Civil claim in our courts based on the facts of a criminal case



6. It is so ordered.

**GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 15<sup>TH</sup> DAY OF MAY 2025.**

.....

**R. NYAKUNDI**

**JUDGE**

