



REPUBLIC OF KENYA



**Lagat v Republic (Criminal Miscellaneous Application
E015 of 2024) [2025] KEHC 6479 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6479 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL MISCELLANEOUS APPLICATION E015 OF 2024**

RN NYAKUNDI, J

MAY 23, 2025

BETWEEN

ACHIM CHERUIYOT LAGAT APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this court is an application dated 19th day of September seeking the following orders:-
 - i. That the petitioner is seeking for sentence review in accordance to article 50(2) (p) (q) of the Constitution of Kenya 2010
 - ii. That the prayers are on sentence only
 - iii. That I the petitioner prays for sentence review under section 50(2) (p) (q) of the C.o.K 2010 in reliance to section 362,364 &365 of the CPC
 - iv. That may the honourable court exercise its discretion and a grant a lesser appropriate sentence in accordance with the exceptional circumstance of the case or substitute the custodial sentence with probation for the remaining part of the sentence
2. Further Affidavit sworn by Achim Cheruiyot Lagat states as follows:
 - i. That I am a Kenyan citizen male adult of sound mind hence competent to swear this affidavit
 - ii. That I was charged with offence of unlawfully being in possession of firearm c/s 89(1) the PC
 - iii. That I plead not guilty to the charges and I was convicted and sentenced to serve 7 years imprisonment



- iv. That I was convicted as a first offender and sentenced to serve a manifestly excessive and predetermined mandatory sentence of 7 years imprisonment despite the exceptional mitigating circumstances of the case
 - v. That I am 22 years of age and a second year student studying Diploma in media at the Eldoret Polytechnic
 - vi. That may the honourable court exercise its discretion and grant a lesser appropriate sentence pursuant to high court decision in HCCRA No 121/2019 at Eldoret George Bor Samoei vs republic judgement delivered by hon. Justice R. Nyakundi or substitute the custodial terms for the interest of justice
 - vii. That it is my humble prayer that I be granted a fair opportunity to argue my application
 - viii. That all I have deponed herein is true to the best of my knowledge, information and belief.
3. In *Shadrack Kipchoge Kogo v Republic* the court of Appeal stated” Sentence is essentially an exercise of the trial court and for this 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 was applied or short of those the sentence was so harsh and excessive that an error in principle must be inferred. The Supreme court of India in *State of M.P v Bablu Natt* stated the principle governing imposition of punishment would depend upon the facts and circumstances of each case. An offence which affects the morale of the society should be severely dealt with. In *Alister Arthony Pareira v State of Maharashtra* the court held that: “Sentencing is an important task in the matte of crime. One of the prime objectives of the criminal law is imposition for an appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of the crime and the manner in which the crime is done. There is no straightjacket formula for sentencing an accused on proof of crime. What sentence would meet the ends of justice depends on the fact and circumstances of each case and the court must keep the gravity of the crime. Motive for the crime nature of the offence and all other attendant circumstances.
4. I have weighed the fact of this case and balancing one factor after another, I find no compelling new evidence to review the order on sentence in terms of Article 50 (6) (a) & (b) of the *Constitution* as read with Section 362 of the *Criminal Procedure Code*. The application is dismissed for being *res-judicata*.

Orders accordingly

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 23RD DAY OF MAY 2025.

R. NYAKUNDI

JUDGE

