



**Sande v Republic (Criminal Miscellaneous Application
E132 of 2024) [2025] KEHC 6366 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6366 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL MISCELLANEOUS APPLICATION E132 OF 2024
RN NYAKUNDI, J
MAY 15, 2025**

BETWEEN

HAGGAI SANDE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this court is an application dated 24th October, 2024 seeking the following orders:
 - i. That the applicant is seeking for sentence review in accordance to Article 50(2) (P) (q) of the Constitution of Kenya 2010.
 - ii. The applicant is seeking to be placed under probation for the remaining part of sentence.
 - iii. That section 4(1) (a) (b) of the Probation Offenders Act 64 law of Kenya
 - iv. I beg to be present during hearing thereof and which application is supported by the annexed affidavit of Haggai Sande which states as follows:
 - i. That I am a Kenyan male citizen of sound mind hence competent to swear this affidavit
 - ii. That I was charged with offence of Rape contrary to section 3(1) as read with 3(3) of the SOA of 2006 convicted and sentenced to 10 years imprisonment at Eldoret CM's court
 - iii. That I am requesting for sentence review of the remaining 3 years imprisonment to be substituted non-custodial sentence
 - iv. That I am remorseful, repentant, reformed and rehabilitated, as I have learned hard lesson in custody and now beg for leniency



- v. That I a young man with a young family who solely depends on me.
- vi. That I do beg that I be accorded to benefit with the provisions of Art 50(2) (q) of the Constitution of Kenya 2010.
- vii. That during my time in prison I have been able to go through various theological and program with certificates which I shall tender at hearing there-of
- viii. That its my humble prayer that I be granted a fair opportunity to argue my applicaiton

2. The Applicant in this case was charged with an offence of rape of a person with mental disability contrary to section 7 of the sexual offences Act No 3 of the 2006. On the 6th day of June 2021 at [Particulars withheld] township in [Particulars withheld] sub- county within Kakamega county unlawfully and intentionally caused your genital organ (vargina) of JMK a person with mental disability. This is the nature of the offence in which the Applicant was sentenced to 10 years. Sentencing is considered to be the end product of most law enforcement and prosecutorial efforts. In sentencing an offender a trial court is guided by the following principles:

Retribution: to satisfy the feeling of vengeance in the mind of victim and the large number of people who share the agony of the victim.

Prevention: To take away for the offender the power of offending

Deterrence: To make the offender afraid of consequences the similia act is repeated (intimidation) and to create save in the mind of the persons who are disposed to commit similar offence

Reformation: To remove the desire of punishment from the mind of wrong

3. Besides the above principles and objectives, case law also plays a major role in providing the necessary yardstick for a trial court to exercise discretion. It is a discretionary jurisdiction as stated in the case of Veen v The Queen (No 2) (1987-88) “ However, sentencing is not a purely logical exercise and the troublesome nature of the sentencing discretion arises in large measures from unavoidable difficulty in giving weight to each of the purpose of punishment. The purposes of criminal punishment are various: protection of society, deterrence of the offender and of others who might be tempted to offend, retribution and reform. The purpose overlap and none of them can be considered in isolation from other when determining what is an appropriate sentence in a particular case. They are guideposts to the appropriate sentence but sometimes they point in different directions. The court of Appeal on its part in Benard Kimani Gacheru v Republic (2002) eKLR states as follows: It is now settled law, following several authorities by this court and by the High Court, that sentence is a mater that rests in the discretion of the trial court. Similarly sentence must depend on the facts of each case. On appeal, the appellate court will easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account some wrong materials, or acted on a wrong principle. Even if the Appellate court feels that the sentence is heavy and that the Appellate court might itself not have passed that sentence, these alone ae not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already states is shown to exist.”

5. This decision answers to the question of the complexity involved in exercising discretion to arrive at a fair, just and proportionate sentence at any given time. From time to time is a balancing Act between the interests of the Accused, the victim, and the community as a whole.



In the instant case, there is no compelling substantial evidence reflected in the impugned decision that the trial magistrate erred in law and fact for this court to review the sentence of 10 years imprisonment. The application for review is therefore dismissed.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 15TH DAY OF MAY 2025.

In the presence of

M/s Sidi for the State

Applicant

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R.NYAKUNDI

JUDGE

