Barno v Republic (Criminal Appeal E027 of 2024)
[2025] KEHC 8257 (KLR) (12 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8257 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CRIMINAL APPEAL E027 OF 2024

RN NYAKUNDI, J

JUNE 12, 2025

BETWEEN

DANIEL BARNO ..... APPLICANT

AND

REPUBLIC ..... RESPONDENT

RULING

1. Before this court is an application made in this case which states as follows:

    i. That the application be certified as urgent and service thereof dispensed with it be heard in the first instance

    ii. That the application is seeking for sentence review pursuant to 50(2) (p) (q) of the *constitution of Kenya 2010*

    iii. That I am humbly beg to be present during the hearing thereof I may argue my petition

It is further annexed by an affidavit sworn by Daniel Barno which states as follows:

i. That I am a male adult Kenyan citizen of sound of mind versed with the fact of this matter and hence competent to swear this affidavit

ii. That, I was charged with the offence of handling stolen goods, tried, convicted and sentenced to serve 7 years imprisonment

iii. That I am a first offender seeking leniency of the court

iv. That the sentence I was given is too harsh for me while I am still young

v. That I beg for another second chance in this honorable court

vi. That this application has overwhelming chances of success based on the constitution and other laws of Kenya

vii. That I am remorseful first offender, repentant, reformed and rehabilitated person and I have learned hard lessons while in prison

viii. That I promise to abide by the terms and conditions set by this court

ix. That may this honorable court be pleased to grant me a fair opportunity to argue my petition before the court

x. That what I have deponed herein is true to the best of my knowledge, information and belief

Decision

1. The applicant is challenging the severity of sentence imposed by the trial court. The law on review of sentence is settled as demonstrated by the court of appeal:

> " It is now settled law, following several authorities by this court and by the high court, that sentence is a matter 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 not 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 principle. Even if, the appellate court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with discretion of the trial court on sentence unless, anyone of the matters already states is shown to exist."

2. On this same aspect the court in *S v Vilakazi* 2009 (1) SACR 552 (SCA) it was held as follows:

> " It is clear from the terms in which the test was framed in Malgas and endorsed in Dodo that, it is incumbent upon a court in every case, before it imposes a prescribed sentence, to asses, upon a consideration of all the circumstances of the particular case, whether the prescribed sentence is indeed proportionate to the particular offence. The constitutional court made it clear that what is meant by the 'offence' in that 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. If a court is indeed satisfied that a lesser sentence is called for in a particular case, thus justifying a departure from the prescribed sentence, then it hardly needs saying that the court is bound to impose that lesser sentence. That was also made clear in Malgas, which said that the relevant provision in the Act 'vests the sentencing court with the power, indeed the obligation, to consider whether the particular circumstances of the case require a different sentence to be imposed. And a different sentence must be imposed if the court is satisfied that substantial and compelling circumstances exist which 'justify' it."

3. In my view the appropriate sentence was passed by the trial court and they found no error of fact or law on the face of the record or that there exist in exceptional circumstances to warrant review of the sentence. The application is dismissed under section 382 of the *criminal procedure code*.

4. It is ordered.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 12TH DAY OF JUNE 2025.

.....

R. NYAKUNDI

JUDGE