



**Etyang v Republic (Criminal Petition E025 of 2024)  
[2025] KEHC 8461 (KLR) (17 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8461 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL PETITION E025 OF 2024  
RN NYAKUNDI, J  
JUNE 17, 2025**

**IN THE MATTER OF ARTICLE 165(3) IN RELIANCE WITH  
362,364 AND 365 AND IN THE MATTER OF SENTENCE REVIEW:**

**BETWEEN**

**SILAS OPOLLO ETYANG ..... PETITIONER**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. This is an application made in the above-mentioned case by the Petitioner seeking the following orders:
  - i. That I am seeking orders for review of sentence under Section 362, 364(1) and 165 of the CPC, CAO 75 Laws of Kenya in reliance with article 27(1) (2) (4), (28), 22 (1) and 51(1) (2) of the constitution of Kenya among other enabling laws.
  - ii. That may this Hon. Court be pleased to consider the provisions of the sentencing policy guidelines 2016 published by the Kenya Judiciary and invoke the provisions of article 165(3) a, b,d, &258(1) of the constitution of Kenya, 2010 and reduce my sentence to a lighter lesser term.
2. It is further annexed by an affidavit which states as follows:-
  - i. That I am a Kenyan citizen adult male of sound mind hence competent to swear this affidavit
  - ii. That I was charged with the offence of robbery with violence C/Section 296(2) and I was convicted and sentence to serve life imprisonment
  - iii. That I appeal to the high court vide APP NO E094/22 whereby my appeal succeeded partially and the life sentence was substituted with 30 years imprisonment



- iv. That I am now approaching this honourable court to kindly review my 30 years sentence to a lesser and more lenient sentence
- v. That this court has competent, unlimited jurisdiction to hear and determine this application under the provisions of article 165(3) (b) of *the constitution* of Kenya 2010
- vi. That I am remorseful, repentant, reformed and rehabilitated, as I have learned hard lesson while in custody and now beg for lenience
- vii. That its more grounds to be adduced and canvassed through written submissions
- viii. I beg to be present during the hearing and determination of this petition
- ix. That all I have deponed herein in true to the best of my knowledge, information and belief

## DECISION.

1. From the historical litigation of this matter the Applicant was found guilty, convicted, and sentenced to life imprisonment for the offence of Robbery with violence c/section 295 as read with Section 295(2) of the penal code. He was aggrieved with both conviction and sentence, necessitating filing of an Appeal before the High Court in Criminal Appeal Case No 094 of 2022. It is in that Appeal Mohochi J pronounced himself as follows:

This court has considered the serious charges against the Appellant the aggravating circumstances of the offence, the advanced age of the victim, and the terror and trauma visited upon by the assailants against a senior citizen leading to the finding that the Trial magistrate exercised her discretion judiciously in sentencing the Accused to life imprisonment instead of the death sentence.

In view of the emerging jurisprudence around the indeterminate nature of life imprisonment, I have considered the aggravating circumstances in which the offence was committed, as well as the period which he spent in custody during the time when he was still on trial, and hereby review the life imprisonment sentence and I now re-sentence the petitioner to 30 years imprisonment, for the offence of Robbery with violence.

The sentence shall run from 10<sup>th</sup> January 2019 to include the pre-trial detention period served by the Appellant.

2. The Judiciary Sentencing Policy Guidelines 2023 provides inter-alia as follows: The punishments that can be meted out for a specific offence are expressly set out in Section 24 of the *Penal Code* and other statutes in which offences are created. Most of these provisions are couched in terms that provide wide discretionary powers for Judges and Magistrates, enabling the court to determine the most suitable sentence for each individual offender. However, the disparities in the sentences imposed upon offenders who have committed similar offences under similar circumstances reveals a lack of uniformity that undermines public confidence in the Judiciary. 1.1.3 Courts are required to act objectively and impartially<sup>1</sup> and remain accountable to the public for their decisions and actions.<sup>2</sup> Article 73 (1) (a) (iii & iv) of *the Constitution* requires State officers to exercise their authority in a manner that “brings dignity to the office” and “promotes public confidence in the integrity of the office”. Article 10 (2) of *the Constitution* sets out the following as the national values and principles of governance that bind all State Officers: rule of law, human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination, good governance, integrity, transparency, and accountability



- 3. In exercising discretion to review the sentence the primacy of the decision must be based in the provisions of Art. 50 (6) of *the constitution* which provides as follows: “ A person who is convicted of a criminal offence may petition the high court for a new trial if (a) The person’s appeal, if any has been dismissed by the highest court to which the person is entitled to appeal, or the person did not appeal with the time allowed for appeal and (b) New and compelling evidenced has become available.
- 4. In a nutshell I have reviewed the application by the Applicant and it fails that threshold test under Art 50 (6) (A) & (B) of *the constitution* on compelling new evidence to persuade this court to exercise discretion for an order of a new trial. “Compelling new evidence “generally refers to information that was not available during a trial, but if presented, would likely have changed the outcome. It must be credible, material to the case, and unavailable despite due diligence.
- 5. For those reasons, the application is dismissed under Section 382 of the *Criminal Procedure Code*.

**GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 17<sup>TH</sup> DAY OF JUNE 2025.**

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**R. NYAKUNDI**  
**JUDGE**

