



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kimeli v Republic (Miscellaneous Criminal Application  
93 of 2018) [2025] KEHC 8232 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8232 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
MISCELLANEOUS CRIMINAL APPLICATION 93 OF 2018  
RN NYAKUNDI, J  
JUNE 12, 2025**

**BETWEEN**

**JOSEPH KIMELI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Before this court is an application dated 2<sup>nd</sup> day of August 2018 seeking the following orders:
  - i. That the honorable court be pleased to hear and determine the application before it for redress as stated above
  - ii. That the honorable court be pleased to admit me on probation or community service, since I have served more than a third of the sentence and the law stipulatesIt is further annexed by an affidavit sworn by Joseph Kimeli which states as follows:-
  - i. That I am a Kenyan citizen adult male of sound of mind hence competent to swear this affidavit
  - ii. That I was charged with the offence of defilement c/sec 8(1) as read with section 8(2) of the [sexual offences act](#) no. 3 of 2006, judgment delivered by Hon. Akinyi at Eldoret lower courts on 05/05/010
  - iii. That I am making his application in reliance to article 165(3) (b) of the [constitution](#) which empowers the court to hear application of this nature
  - iv. That the applicant herein have served part of the sentence hence liable to the benefits of the law as per the stated section.
  - v. That the court did not consider time spent in remand custody i.e. 30/10/09-05/05/010 while sentencing.



- vi. That upon the incarceration period I am reformed and underwent some rehabilitation programs like carpentry.
- vii. That, all I have deponed above is true to the best of my knowledge, information and belief.

## **Decision**

- a. The applicant in this case has moved to the court to review the sentence imposed by the trial court under section 362 and 364 of the CPC. The role of courts' in any criminal trial: To try persons accused of offences. Only a court may decide whether or not a person is guilty of a particular offence; To impose whatever sentencing disposition is appropriate in accordance with the laws of the legislature and relevant sentencing principles; To interpret the laws to ascertain the intention of the legislature if the law is not clear; To hear appeals from finding of guilt or from a sentencing order.
  - b. The purposes of sentencing are set out in the sentencing policy of the judiciary of 2023 which provides inter-alia that the sentence may be imposed to meet the following objectives: To impose retribution – to punish to an extent or in a way which is just in all the circumstances; To provide for the rehabilitation of offenders; To deter the offender from offending again (special or personal deterrence); To deter others from committing the same or a similar offence (general deterrence); To show the community that the impugned conduct is to be condemned For the protection of the community.
2. This court in exercising jurisdiction and review of sentence must bear in mind the guidelines set out in Bernard Kimani Gacheru v Republic [2002] eKLR:

“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, the 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 material, or acted on a wrong principle. Even if, the Appellate Court might itself not have passed that sentence, these alone are 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.”
  3. It is evident that the underline principles play a critical role in the fulfillment of the purpose of the criminal law and the review court does not have unfettered discretion to enhance or reduce the sentence of the trial court unless it bears resemblances to the principle of Bernard Gacheru case supra. This not one such case. I therefore dismissed the application under section 382 of the CPC.
  4. It is ordered.

**GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 12<sup>TH</sup> DAY OF JUNE 2025**

**R. NYAKUNDI**

**JUDGE**

Representation:

M/s Sidi for the State

