



**Otieno v Republic (Miscellaneous Criminal Application
E126 of 2024) [2025] KEHC 10032 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 10032 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS CRIMINAL APPLICATION E126 OF 2024**

**JM NANG'EA, J
JUNE 19, 2025**

BETWEEN

COLLINS OTIENO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. By this Notice of Motion dated 20th July 2024 the Applicant seeks orders as hereunder;-
 1. That the honourable court be pleased to substitute my current sentence of imprisonment that am now serving with a probation sentence. (sic)
 2. That the honourable court be pleased to invoke the provisions of Section 362, 363 and 364 (b) of the *Criminal Procedure Code* and provisions under the *Probation of Offenders Act* and review the balance of my sentence to a non-custodial sentence.(sic)
 3. That this honourable court has jurisdiction to determine this petition under the provisions of article 165(3) (9) of the new *Constitution* of Kenya 2010 and the relevant provisions under the probation of offenders acts respectively.(sic)
 4. That am utterly remorseful and repentant of what really happened and if given another chance, I will not repeat such an act again.(sic)
 5. That the application is further supported by the annexed affidavit of NAK/1889/023/LS Collins Otienoamongst other grounds that shall be adduced during the hearing of this petition. (sic)
2. The Applicant avers in his affidavit supporting the application that he had been charged before the lower court *vide* Nakuru Chief Magistrate's Criminal Case Number E741 of 2023 with the offence of attempted murder contrary to Section 220 (a) of the *Penal Code*. He was convicted after full hearing



and sentenced to 5 (five) years imprisonment. He now applies for substitution of the sentence for that of Probation, expressing his remorse.

3. I have perused the Applicant's and the Respondent's Submissions on the application. The Applicant pleads that he had reformed and seeks re-sentencing for that reason. The Republic opposes the application noting that the sentence imposed is legal.
4. I agree with the Republic that there is no legal basis for substitution of the custodial sentence with a non-custodial one. The maximum sentence for the offence is life imprisonment. The Applicant was therefore handed a lenient sentence of 5 (five) years in prison. Besides, this is not an appeal so that the court may consider the complaint as to severity of the sentence. Perhaps the Applicant can only benefit from the Judiciary's Decongestion Programme when the exercise is undertaken.
5. The application is therefore without merit and is dismissed.

J. M. NANG'EA, JUDGE.

RULING DELIVERED THIS 19TH DAY OF JUNE, 2025 IN THE PRESENCE OF:

Ms Mwaura for the DPP

Applicant, present

Court Assistant (Jeniffer)

J. M. NANG'EA, JUDGE.

