



**Kandie v Republic (Criminal Petition 42 of 2019)
[2025] KEHC 10166 (KLR) (15 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10166 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL PETITION 42 OF 2019
RN NYAKUNDI, J
JULY 15, 2025**

BETWEEN

PAUL KIBET KANDIE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. What is before this court for determination is Notice of Motion Application dated 29th day of July 2024 in which the Applicant is seeking the following orders:
 - a. That, the petitioner is seeking for permission to amend his petition to review his sentence for the reason that his major ground on Muruatetu is no longer available to him as a basis of his review.
 - b. That, the petitioner is seeking for orders to review his sentence under section 362 as read with sec 364 of the criminal procedure code and in reliance to article 50 (2) (p) of COK.
 - c. That the petitioner is seeking for orders to set aside the life imprisonment imposed on him and to have it substituted with a determinate prison sentence.
 - d. That the petitioner is seeking for orders when his sentence review become successful it should further review it in compliance to section 333(2) of CPC.
 - e. That the petitioner is seeking for orders for a review of his sentence that is reflective of the current sentencing objectives that are less punitive that are listed in the sentencing policy guidelines 2023.
 - f. That the petitioner is praying to be present during the determination of this petition



2. The Application is supported by the annexed affidavit sworn by the Applicant in which he avers as follows;

- a. That I was charged with the offence of grievous harm contrary to section 234 of PC and sentence to serve a life sentence by CM's court at Eldoret that was delivered on 29/10/2008 by the Hon. M. Mumachi.
- b. That the petitioner did file for appeals after being sentenced at the High Court (84 of 2008) which was dismissed by the said court in its entirety
- c. That today 29/07/2024 amends this criminal review for consideration by the court on the grounds:
 - a. That he is serving a life sentence which had been declared to be unconstitutional in the decisional law of Julius Kitsao Manyeso appeal no. 12 of 2021 in Malindi and prays for a review of his sentence on the principle held in the above authority
 - b. That he prays that when the above prayer becomes successful it should consider reducing a period of 6 months from his sentence in compliance to section 333(2) of CPC as pre-trial period
 - c. That he offered a mitigation statement as a formality as it was not considered. A life imprisonment was imposed. Following the new jurisprudence in place the old trend is being relaxed in consideration of mitigation on record (provocation due to infidelity, was drunk and lost self-control of his action, wife used child as human shield from attack, he is aged 50 years nearing life expectancy, first offender who is remorseful and regrets his action and post sentence mitigation has reconciled with complainants, has grade 1 in carpentry, has done a diploma in bible course, has a recommendation from prison authority, both complainants have healed and regained full function of the injured organs
 - d. That the court should review his sentence reflective of the new sentencing objectives that would ensure his reconciliation, rehabilitation and reintegration, which are achievable by shortening sentence

3. The Application was canvassed by way of written submissions.

Applicants Written Submissions

4. In support of the application the applicant relied on his written submissions with the following key highlights:
 - a. That the honorable court has got the discretion on sentencing following the decision as stipulated in sections 364, 379 (4), 316, 357 of the *Criminal Procedure Code*, Art 165, 48, 23 (1), 25 (c), 27 (1) (2) (4), 50 (2) (p) (q), 159 (2)
 - b. That the Hon. Court be pleased to find that I was convicted as a first offender



- c. That the Hon. Court be pleased to find that I am a family man whose life and that of my family has been greatly affected by the imprisonment
- d. That the Hon. Court be acknowledge the fact that while in prison I have taken full advantage of the rehabilitative programs offered in the correctional facility as is evident in the attached documents
- e. That the Hon. Court be pleased while deciding on the sentence to be guided by the High court judgment in the case of Joseph Kaberia and 11 others Petition no 618 of 2010, the Court of Appeal of Kenya's decision in the case of William Okungu Kittiny v Republic [2018] eKLR the provisions of Art 50(2) (p) (q) and the provisions of section 333(2) of the [Criminal Procedure Code](#) this court's decision in Vincent Sila Jona & 87 others v Kenya Prison Service & 2 others [2021] eKLR

Decision

5. For the applicant to succeed in his application there must be evidence to justify the exercise of discretion to review the sentence imposed by the trial court and affirmed by the High court. I have in mind the following grounds where an error occurs when a court correctly identifies the relevant (or potentially relevant) body of sentencing law but applies that law incorrectly. Examples of application error include, but are not limited to, the erroneous imposition of a potentially relevant, but not actually applicable, sentence enhancement provision; application of a sentence enhancement provision for which the applicant is properly eligible on one count but erroneously imposed by the court on another count for which sentencing enhancement is ineligible; inconsistency between the sentence pronounced orally by the judge in open court and the written imposed on the posthearing sentencing order; and application of sentencing guidelines with an erroneous assignment of criminal offense history or offense level.
6. Although section 362 is couched in terms of a review of sentence which was imposed, and although review powers are ordinarily confined to considering whether there was any irregularity in the proceedings, the reviewing judge is required to evaluate whether the entire proceedings pertaining both to the sentence as well as the merits of the conviction are not only formally in order and regular, but also whether they are fair and in doing so it has long been excepted that the reviewing judge exercise a function akin to an appellate court. In terms of Art 165 (6) (7) of [the constitution](#) as read with section 362 of the CPC the reviewing judge has extremely wide powers to alter, reduce, set aside the sentence imposed or make any such orders which may promote the hands of justice
7. It is trite law in our jurisdiction that sentencing or punishment is pertinently a matter of discretion of the trial court. A court exercising appellate jurisdiction cannot, in the absence of a material misdirection by the trial court, approach the question of sentence as if were the trial court and then substitute the sentence arrived at by it simply because it prefers it. To do so would be to usurp the sentencing discretion of the trial court.
8. The court in *Keva v S* (A103/2021) [2021] ZAWCHC 217 held inter alia that the sentence imposed by the trial court would not be altered:

‘These include the following: the sentence will not be altered unless it is held that no reasonable man ought to have imposed such a sentence, or that the sentence is out of all proportion to the gravity or magnitude of the offence, or that the sentence induces a sense of shock or outrage, or that the sentence is grossly excessive or inadequate, or that there was an improper exercise of his discretion by the trial judge, or that the interest of justice requires it’



9. In my view the sentence imposed in consonant with the gravity of the offence is not in harsh or grossly excessive to be reviewed by this court. The application is therefore dismissed for want of merit.

DATED AND SIGNED AND PUBLISHED VIA CTS AT ELDORET ON THIS 15TH JULY 2025

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R. NYAKUNDI

JUDGE

