



**Mwangi & another v Republic (Criminal Revision E142 of 2025)
[2025] KEHC 10675 (KLR) (22 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10675 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E142 OF 2025
RN NYAKUNDI, J
JULY 22, 2025**

BETWEEN

STEPHEN MWANGI 1ST APPLICANT

DENNIS KIPLIMO OCHIENG 2ND APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Representation:

M/s Sidi for the state

1. The applicants were charged of tempering with telecommunication plant. The brief facts are on the 19th day of December 2024 at Kahoya estate in Turbo sub county within Uasin Gishu county, jointly with others not before court intentionally and unlawfully vandalized power cable/power distributor board 16mm×4core valued at Kshs. 24,000/=, RRU power cable 16mm×4core of 7 runs valued at Kshs. 36,000/=, rectifier power cables 16mm×4core valued at Kshs. 20,000/=, yellow cables 50mm valued at Kshs. 20,000/=, electric fence sensor valued at Ksh.50,000/= all valued at Kshs. 150,000/= the property of Safaricom (k) limited. They pleaded guilty to the offence convicted and sentenced to a fine of 100,000 in default 3 years imprisonment. They have now applied for their sentence to be reviewed and the remainder of the sentence of 1 year 5 months' probation at Eldoret station.

Decision

2. This application is based on the provisions of the criminal procedure code namely Section 357, 362, 364 as read with 382. *The constitution* also provides under Art 50 (2) (p) (q) as follows:



- (p) to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishments for the offence has been changed between the time that the offence was committed and the time of sentencing; and
 - (q) if convicted, to appeal to, or apply for review by, a higher court as prescribed by law.
 - (3) if this Article requires information to be given to a person, the information shall be given in language that the person understands.
3. The same constitution in Art 50 (6) (a) (b) expressly states 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 within the time allowed for appeal; and
 - b. new and compelling evidence has become available.
4. This application is based on the social inquiry report dated 21st July 2025 carried out by the probation officer which contextualized the issues as follows:

Sources of information prison records, inmate families, community and the complainant

Current Family and Personal History

The Inmate is the son of Hiram Kimani and Shiura Wanjiko. He is the firstborn in a family of eight Siblings. The family owns 3 points of Land in Turbo Sub-County. There is no previous Criminal History in the family.

Upon attaining School going age the Inmate was enrolled at Flamingo Primary School and did not join Secondary School due to financial constraints. Prior to his arrest, he worked as a casual laborer at Kamukunji Village. He has cordial ties with his family members. During his stay in prison, he has been in touch with his family through welfare phone and also was visited with the Brother.

Prison Assessment, Rehabilitation and Re-integration

He never worked due to health issues, he was diagnosed with TB

Offender's Attitude Towards Non-custodial Measures

He pleads for leniency from the honorable court admitting that he erred and has learnt a lesson. He has vowed to keep off bad company

Recommendations

Your Lordship, considering the fact that the inmate owns up to the offence committed and he is remorseful, he has undergone rehabilitation in prison and he will be assisted by his family to re-settle and re-integrate well. Therefore, I recommend that he be placed for One Year Five Months' Probation at Eldoret station and during this period, he will be under the supervision of the probation officer.

5. The role of non-custodial sentence should underpin our penal system in which custodial sentence remains a recourse of last resort in punishing offenders. The sentence policy guidelines of the judiciary 2023 provides a framework in which Judicial discretion should be exercised to arrive at a fair and



proportionate sentence on individualized circumstances. The objectives and principles of sentencing are well articulated and defined as follows:

- a. Retribution: to punish the offender for his/her criminal conduct in a just manner.
 - b. Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
 - c. Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law-abiding person.
 - d. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.
 - e. Community protection: to protect the community by incapacitating the offender.
 - f. Denunciation: to communicate the community's condemnation of the criminal conduct.
 - g. Reconciliation: To mend the relationship between the offender, the victim and the community.
 - h. Reintegration: To facilitate the re-entry of the offender into the society.
6. In a documented research by Chrispinus Adenya Aben entitled Factors Influencing Success of Non-Custodial Sentence in Kenya: A Case of Kilifi District in Kilifi County 2011. He made the following observations: First and foremost prison population around the world is increasingly placing enormous financial burdens on governments. There is growing recognition that imprisonment does not achieve some of its most important stated objectives, as well as being harmful to offenders, families and in the long term to the community (UNODC, 2006).
 7. It came out clearly from his research; Supervision is an essential component of community based correction with the primary objective of enforcing compliance with the conditions of release to minimize risk to the public and to re-integrate the offender into the law abiding lifestyle. Lax supervision and failure to deal firmly with those who persistently violate the terms of release can bring an entire system into disrepute in criminal justice. (Killinger GG and Cromwell P.F, 1990). "The law is without doubt a remedy for great evils, yet it brings with it evils of its own". (Subbrano V.C.G. 1993). There are three primary gateways in the criminal justice. The first is at the police at the initial stage of apprehension, the second is at the court after the determination of guilt and passing of a sentence and the third is the gateway to the community at the conclusion of the sentence (Johnson R, 2003).
 8. Rule 8.2 of the Tokyo rules on non-custodial affirm that courts or sentencing authorities may dispose off cases in any of the following ways-verbal sanctions, admonitions, reprimands and warning, conditional discharge, status penalty, economic sanctions and monetary restitution, restitution to the victim or compensation order, confiscation or expropriation, suspended or deferred sentence, probation and judicial supervision, community service order, house arrest and any other non-institutional treatment. Supervision is critical in realization of sentencing objectives. This is operationalized as poor and lax supervision leads to reconviction and abscondism. The quality and number of contacts between the offender are key in reforming, re-integrating the offender. The caseload per officer and the frequency of contacts between the officer and the probationer determines the level of intensity of supervision based on the risk category of the probationer. The community plays key role in having offenders change. Community attitude, home environment is deterministic of offender's potential to change.



9. Time has come to re-conceptualize the effectiveness of custodial sentencing to promote a clear, fair, uniform and consistent approach by all levels of courts. A theme of any review of sentence must not lose sight of the objectives and sentencing. Am of the consider view that an effective sentence must also serve to communicate to society that justice has been done and the wrong doer punished and denounced for his or her conduct. Generally speaking over time I have been involved in the practice of law as a trier of criminal cases they is no probative evidence that the harsher, punitive or severe the sentence does provide greater marginal deterrent effects.
10. Sentencing is a discretionary process mainly exercised by trial courts who have the advantage to appreciate the circumstances of the offence and how it applies to the sentencing objectives and principles within the regulatory framework of our sentencing policy guideline 2023. This court is being asked to review the custodial sentence and have it substituted with non-custodial sentence. As I appreciate the record and the impugned decision on sentence I bear in mind that this is one area of law which involves the weighing of may complex factors, it will always be possible to point to some factors which should arguably have been taken into account or left out of account; even if they should have been, the court should not intervene unless it is convinced that this would have resulted in the decision going the other way.
11. There is a big outcry amongst our communities and society at large on the level of inconsistency, disparity, unfairness, and disproportionate verdicts on sentence being imposed by the trial courts and on even on appeal which do not reflect the sentencing objectives and principles in our policy document. As if that is not enough the letter and spirit of our sentencing scheme seems to depart from the legislatures intention and vision in the criminal administration of justice. Sentencing in Kenya ought to be fair and proportionate to the crime being prosecuted by the state as against the accused persons or defendant. These canons on fair and proportionate sentence requires that:All relevant factors of a case must be considered including the seriousness of the offence, the impact on the victim and others affected by the case, and the circumstances of the offender;Sentences should be no more severe than is necessary to achieve the appropriate purposes of sentencing in each case;Reasons for sentencing decisions must be stated as clearly and openly as circumstances permit;Sentencing decisions must be made lawfully and sentencers must have regard to any sentencing guidelines which are applicable;People should be treated equally, without discrimination; andSentencing decisions should treat similar cases in a similar way, assisting consistency and predictability
12. From the reading of the trial record the applicant pleaded guilty to the offence as a consequence of which the applicants were convicted and sentenced to a fine of 100,000/= in default 3 years' imprisonment. One of the most significant ways an offender can accept responsibility for her/his actions is to enter a guilty plea as early as possible. By entering a guilty plea, particularly an early plea, the offender not only accepts responsibility for her actions, she also expresses remorse for them and mitigates the impact on the victim and community by avoiding the necessity of victims having to testify at trial and saving the community the resources associated with a trial. An early guilty plea or other expressions of remorse and responsibility are generally considered mitigating factors. "A plea entered at the last minute before the trial is not deserving of as much considerations as one that was entered promptly."
13. As a trial court and now sitting on appeal in the scheme of sentencing the court defines the category of offences within the penal code or any other statutory provision which creates an offence punishable under the adjudication of criminal cases. The court goes further to set the starting point based on aggravating and mitigating factors, infused with collective court experience, comparisons to other precedents already made by superior courts, the views of the social values relating to the category of crime in question and finally refined the sentence to the specific facts of the individual case



and offender. I presume that is what must have happen when the learned trial magistrate found the applicants guilty, convicted and sentenced to 100,000/= in default 3 years imprisonment. The comparative jurisprudence in R v Lacasse, 2015 SCC 64 remarked as follows: That;

Sentencing ranges are nothing more than summaries of the minimum and maximum sentences imposed in the past, which serve in any given case as guides for the application of all the relevant principles and objectives. However, they should not be considered ‘averages,’ let alone strait jackets, but should instead be seen as historical portraits for the use of sentencing judges, who must still exercise their discretion in each case.

14. In this application there is no evidence of prior criminal history and that the applicants are one of those who are not eligible for rehabilitative efforts to re-integrate them to the society by reviewing their custodial sentence and have it substituted with non-custodial to be placed on probation for 1 year and 5 months. It is so ordered.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 22ND DAY OF JULY 2025

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R. NYAKUNDI

JUDGE

