



**Masinde v Republic (Miscellaneous Criminal Application
E010 of 2025) [2025] KEHC 10218 (KLR) (15 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10218 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CRIMINAL APPLICATION E010 OF 2025
RN NYAKUNDI, J
JULY 15, 2025**

BETWEEN

SHADRACK WAFULA MASINDE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. What is pending before this court for determination is a Notice of Motion Application in which the Applicant is seeking the following orders;
 - a. That the applicant is seeking for sentence review in accordance to Article 50(2) (p) (q) of *the constitution* of Kenya 2010.
 - b. That the applicant is seeking to be placed under probation for the remaining part of sentence.
 - c. That section 4(1)(a)(b) of the probation offenders act 64 law of Kenya.
 - d. I beg to be present during hearing thereof.
2. The Application is supported by the annexed affidavit sworn by the Applicant who avers as follows;
 - a. That I was charged with offence of stealing a motorbike contrary to section 278 of the penal code, convicted and sentenced to 4 years' imprisonment at Eldoret CM'S court on 8th October 2024 by Hon. D. Mikoyan.
 - b. That, I am requesting for sentence review of the remaining 3 years 4 months' imprisonment to be substituted with non-custodial sentence.
 - c. That I am remorseful, repentant, reformed and rehabilitated, as I have learned hard lessons while in custody and now beg for leniency.



- d. That, I am a young man with a young family who solely depends on me.
- e. That I do beg that I be accorded to benefit with the provision of Article 50(2) (q) of *the Constitution* of Kenya 2010.
- f. That, during my time in prison I have been able to go through various Theological and Social programs with certificates which I shall tender at hearing thereof.
- g. That it's my humble prayer that I be granted a fair opportunity to argue my application.

Decision

3. The brief background is that the applicant was charged, tried, convicted under pre-bargaining agreement dated 6th October 2021. For that offence of robbery with violence contrary to section 296 (2) of the penal code and sentenced to 4 years' imprisonment he has now applied for sentence review downwards. In law there are very clear principles underpinning the review of sentence passed by a trial court. In the case of *S vs Malgas* 2001 (1) SACR 469 (SCA) at para 12 where it was held that:

“A court exercising appellate jurisdiction cannot, in the absence of material misdirection by the trial court, approach the question of sentence as if it 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...However, even in the absence of material misdirection, an appellate court may yet be justified in interfering with the sentence imposed by the trial court. It may do so when the disparity between the sentence of the trial court and the sentence which the appellate court would have imposed had it been the trial court is so marked that it can properly be described as “shocking”, “startling” or disturbingly inappropriate”

4. Similarly, in *Bernard Kimani Gacheru vs. 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, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some factor, or took into account some wrong material, or acted on a wrong principle. Even if, the Appellate court feels that the sentence is heavy and that the Appellate court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with discretion of the trial court on sentence unless, anyone of the matters already states is shown to exist.”

5. Having assessed the affidavit evidence I find no new compelling evidence to review the sentence imposed by the trial court. The review of the application stands dismissed under section 382 of the CPC.

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

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R. NYAKUNDI
JUDGE

