Lagat v Republic (Criminal Revision E070 of 2025)
[2025] KEHC 12511 (KLR) (9 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12511 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CRIMINAL REVISION E070 OF 2025

RN NYAKUNDI, J

SEPTEMBER 9, 2025

BETWEEN

NICKSON KIPROTICH LAGAT ..... APPLICANT

AND

REPUBLIC ..... RESPONDENT

RULING

Representation

M/S Sidi for the State

1. Before this court is an application by the applicant seeking the following orders:
    a. That the honorable court be pleased to review the applicant's sentence of 20 years' imprisonment and consider placing the applicant on probation or issuing a non-custodial sentence
    b. That the honorable court be pleased to make any other or further orders it deems just and fit in the circumstances.
2. The application is made on the following grounds;
    a. The applicant is currently serving a 20-year sentence and has served a substantial portion of the same.
    b. The applicant has undergone rehabilitation, demonstrated remorse and maintained good conduct throughout incarceration
    c. The applicant lost both parents who were the sole breadwinners of the applicants' young and vulnerable family

d. The applicant is a first time offender and seeks reintegration into society to support and care for his family

e. This court has jurisdiction to review and revise sentences under *the constitution* and criminal procedure code.

3. The Application is supported by the annexed affidavit sworn by the Applicant who deponed as follows;

a. That I am a Kenyan citizen adult male of sound mind hence competent to swear this affidavit

b. That I was convicted in S. O Case No. 40 of 2016 and sentenced to 20 years' imprisonment for the offence of defilement c/sec 8(1) as read with 8(3) SOA No. 3 of 2006

c. That I have so far served a substantial portion of the sentence, having been in custody since 04/02/20164.

d. That I am a first offender and have maintained excellent conduct during my incarceration.

e. That I have participated in rehabilitation programs and acquired valuable life and vocational skills while in custody i.e. certificate in theology, certificate in metal work and general agriculture.

f. That I have shown genuine remorse for my actions and undergone spiritual, emotional, and moral transformation.

g. That I lost both of my parents, who were the sole providers for my young family, and my continued imprisonment has left them in a state of hardship.

h. That I now seek a second chance at life through a reduction of sentence or placement on probation so I can contribute positively to society and support my family

i. That this application is made in good faith and in the interest of justice and rehabilitation.

Decision

4. The jurisdiction of this court is exercisable under Article 165 (6) and (7) 50 (2) (p) (q) and sub aArticle 6 (a) and (b) of *the Constitution* as read with Section 362 and 364 of the Criminal Procedure Code. The guideline principles are to be found in the following authorities:

S. vs. Magas 2001 (1) SACR 469 (SCA), Benard Kimani Gicheru vs Republic [2002] eKLR, Mokela vs The State (135/11) [2011] ZASCA 166 and Ogolla s/o Owuor vs Republic [1954] EACA 270.

5. Some of the key principles which are applicable on review of sentence can be drawn from the Benard Gacheru case in which the Court of Appeal held:

> " 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 material 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 the discretion of the trial court on sentence unless, anyone of the matters already states is shown to exist."

6. In appreciating the revisionary jurisdiction of a court order, such as a sentence, the decision of a trial court on the merits and its nature may be deemed decisive and final, save for the right of appeal or review under Article 50(6)(a) and (b) of *the Constitution*, which primarily provides for the existence of new and compelling evidence as a basis for the court to order a new trial. Having also given due consultations to the principles of sentencing in the Mokela Case in which the Supreme Court of South Africa held that:

> "It is well established that sentencing remains pre-eminently within the discretion of the sentencing court. This salutary principle implies that the appeal court does not enjoy carte blanche to interfere with sentences which have been properly imposed by a sentencing court. In my view, this includes the terms and conditions imposed by a sentencing court on how or when the sentence is to be served."

7. In this country since the advent of Francis Muruatetu vs R (2017) eKLR an avalanche of applications and petitions on resentencing or review of sentences became the order of the day. In most of those applications it was weaponizing the legal system for their own benefit. To say just the least, the procedural and statutory framework of sequencing and adjudication of such like cases sometimes became a total nightmare to the level of court processing such requests initiated from the correctional facilities.

8. That is why I have alluded elsewhere on this branch of law that revisional jurisdiction in Section 362 of the Criminal Procedure Code as drafted and minimally amended might not be able to answer the emerging issues given the new constitutional order of our Republic. With regard to this question, there is sometimes confusion as the jurisdiction on review of an order or revision as defined and known in law. That is how occasionally invoking the doctrine of pari materia in Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules find their place in this place for Article 50 (6) (a) & (b) of *the Constitution* sets a limitation of the grounds being new and compelling evidence for a new trial to be ordered by the Court.

9. In my considered view, for this applicant to qualify for review of sentence besides the guidelines given by the Court of Appeal in the Benard Gacheru Case, his or her application must fulfil by way of evidence discovery of some new set of facts/evidence which was not within his knowledge and the Court at the time of the delivery of the judgment. In addition, the impugned judgment must evidence some mistake, fraud or error that is manifest on the face of the record or alternatively the judgment as it is must have given right to a miscarriage of justice.

10. Indeed, this application has no admissible, credible and convincing evidence for this court to review the sentence. It is a sentence which fits the crime. The application is dismissed under Section 382 of the Criminal Procedure Code.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET THIS 9TH DAY OF SEPTEMBER 2025.

.....

R. NYAKUNDI

JUDGE