



REPUBLIC OF KENYA



**Njugun v Republic (Miscellaneous Criminal Application E078 of 2025)
[2025] KEHC 12542 (KLR) (9 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12542 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CRIMINAL APPLICATION E078 OF 2025
RN NYAKUNDI, J
SEPTEMBER 9, 2025**

BETWEEN

SAMWEL MACHARIA NJUGUN PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. Before this court is an application dated 19th day of May 2025 seeking the following orders:
 - a. That the Applicant is seeking for orders for reviewing the decision of the trial court on the reason it did not factor a very relevant fact in reaching the decision to find him guilty as charged.
 - b. That the applicant is seeking for orders for a reduction of this sentence proportionate to the period he spent in pre-trial custody in compliance to Section 333(2) of the Criminal Procedure Code.
 - c. That the applicant is seeking for orders for a review of the imposed default sentence that went past the provided limit under section 28(2) of the Penal code.
 - d. That the applicant is seeking for orders to consider substituting his custodial sentence with a non-custodial sentence on account that he is remaining with a period of less than 2 years of his sentence which can be suitably be served under a probation sentence.
 - e. That the applicant is seeking for orders to substitute his remaining custodial sentence to a non-custodial sentence of probation based on objective for reconciliation and reintegration in family interest that the complainant is a son to my brother.
 - f. That the applicant is praying for any other order that this Honourable court may deem fit for his current circumstances of his case.



- g. That the applicant is praying to be present during the determination of this application
2. Which application is supported by the annexed affidavit of Samwel Macharia Njuguna with the following grounds:
- a. That I was charged with the offence of assault contrary to Section 251 of the Penal Code was convicted and sentenced to fine of Kshs 100,000 in default to serve 2 years by CM's Court at Eldoret that was delivered on 11th May 2025 by the Hon. Mogire Onkoba.
- b. That the applicant did not file an appeal as the law does not allow an appeal of 2 years' sentence.
- c. That I am writing this Misc. Application for a prayer to review my imposed sentence on grounds that:
- a. That the trial Magistrate failed to consider a relevant factor that the wounds found on the complainant were as a result of bed sores and not applicant assault on him.
- b. That the trial Magistrate did not consider the period he spent in pre-trial custody for 19 days from his sentence of 2 years in compliance to Section 333(2) of CPC during his sentence hearing before he got admitted to cash bail.
- c. That the applicant is faulting the sentencing of the trial court for being improper and illegal in that the imposed default sentence exceeded the limit prescribed fine of Ksh 50,000/= in default 12 months under section 28(2) of Penal Code by doubling the fine to Ksh 100,000/= and the sentence to 2 years.
- d. That imposed sentence was harsh and excessive in consideration of principles of sentencing. Circumstances of his offence were not grievous/aggravated, to warrant 2 years sentence. His rights under Article 50 (2) (p) of COK were violated as he should have benefited from least severe sentence.
- e. That the sentence he is serving of two (2) years may be suitably served under probation.
- f. That applicant is praying for any other order the court may deem fit in the circumstance of his case by making a finding that the time already served to be adequate or sufficient punishment.

Decision

3. The foundational principles on sentencing are that first, sentences must punish offenders and protect the public. There must always be space in prison for the most dangerous offenders. Second, sentence must encourage offenders to turn their backs on a life of crime, cutting crime on reducing re-offending. Third, it is time that we expand and make use of greater use of alternative forms of sentencing outside prison. This would be in line with the sentencing principles and objectives outlined in the Policy dated September 2023 which provides inter alia; deterrence, retribution, rehabilitation, transformation etc.
4. In the case before court, the applicant was charged with the offence of grievous harm whose prescription of sentence is prescribed to be life imprisonment. In passing sentence, the learned trial Magistrate imposed a fine of Ksh 100,000/= in default 2 years imprisonment. In my considered view there is no error apparent on the face of the record to incentivize this court to exercise discretion and review the sentence downwards or set it aside in its entirety. The application fails.

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



.....
R. NYAKUNDI
JUDGE

