



**Lokuju v Republic (Miscellaneous Criminal Application  
E147 of 2023) [2024] KEHC 1508 (KLR) (16 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1508 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT LODWAR  
MISCELLANEOUS CRIMINAL APPLICATION E147 OF 2023  
RN NYAKUNDI, J  
FEBRUARY 16, 2024**

**BETWEEN**

**PETER LOKUJU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being a review on sentencing in Cr. Case No. E2020 of 2022 before Hon. Mayamba PM)*

**RULING**

1. The applicant was charged with attempted murder, contrary to section 220 (a) of the penal code. In brief on the 31/8/2022 at Kakuma refugee camp in Turkana West Sub-County within Turkana County, attempted unlawfully to cause the death of Clement Logwe by cutting him with a panga.
2. On 14/9/2022 the applicant pleaded not guilty to the elements of the offence calling upon the prosecution under Art. 50 (2) (a) of the Constitution to disapprove his innocence beyond reasonable doubt. To that extent on 22/9/2022, he again seems to have reflected further on the issue necessitating him to make an application before the court to change his plea of not guilty and have it substituted with that of guilty. The trial court upon receiving the facts and on interrogating the questions arising thereto the applicant admitted the offence as framed by the state. From the record the learned trial magistrate considering the mitigation and aggravating factors he sentenced the applicant to 10 years imprisonment. He did not prefer an appeal but elected to seek review of sentence in a notice of motion filed in court on 17/10/2023 expressed; In the matter of Arts.2,3(a),19(2),20(1),22(1),23(1), 25(c),26(1),27(1),28,50(2) (p) (q),159 (2) and 165(3) of the Constitution of Kenya and in the matter of Section 333(2) of the CPC Cap 75. The gist of the application is to seek review of sentence imposed by the trial court on the following grounds;



1. That I was charged and convicted for an offence of attempted murder under section 220 (q) of the Penal Code in criminal case No MCCR/E 202 of 2022 at RM's court at Kakuma and sentence to 10 years imprisonment.
2. That I am a first offender.
3. That I pleaded guilty.
4. That I was totally drunk on that day of the incident
5. That may this honourable court be pleased to have mercy on me, by reducing this sentence that I was given in the law court.
6. That the honourable court be pleased to award a lenient definite sentence as provided for under Art. 50(2) (p) (q) of the Constitution of Kenya or other appropriate reliefs that the court may grant.

### Determination

3. Looking at this application the court is being asked to exercise jurisdiction under Arts.50 (6) (a) & (b) & 165 (3) of the Constitution. In addition, the applicant has cited Section 333(2) of the CPC. The issue at stake is on review of sentence and not on conviction. For the purposes of determining the issue in dispute it is plausible to rely on the following settled principles;

The Court of Appeal in Thomas Mwambu Wenyi v Republic [2017] eKLR held that;

“Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing and accused person on proof of crime. The courts have evolved certain principles twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the courts must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.”

4. In the Francis Muratetu case & another v Republic (2017) eKLR provided the following framework on sentencing;
  - (a) Age of the offender;
  - (b) Being a first offender;
  - (c) Whether the offender pleaded guilty;
  - (d) Character and record of the offender;
  - (e) Commission of the offence in response to gender-based violence
  - (f) Remorsefulness of the offender;



- (g) The possibility of reform and social re-adaptation of the offender and
- (h) Any other fact that the court considers relevant.

5. From the perspective of the applicant there is a sentencing error made by the trial magistrate invoking this court’s jurisdiction to review the sentence downwards in favour of the applicant. I acknowledge at the outset that the harm associated with sentencing error differs qualitatively from the harm associated with wrongful conviction because a rightfully convicted offender deserving of criminal punishment is in fact guilty of a crime and not innocent. To enumerate with greater specificity, the particular type of harms caused by sentencing error one must look at two perspectives, the offender’s and the state’s. From the offender’s perspective, there are two scenarios of potential harm. First, when an erroneously severe sentence goes uncorrected thereby infringing the offender’s fundamental rights and freedoms as enshrined in the Bill of Rights of our Constitution. Secondly is when an erroneously lenient sentence is corrected upward long after entry of the original sentence thereby undermining the finality of the sentence and frustrating the legitimate expectations of the offender from benefiting from an early release. Likewise, from the state’s perspective there are also two scenarios of potential harm. First, when a sentence is erroneously lenient or erroneously severe thereby preventing the state from securing the punishment intended by the legislature and secondly when sentencing error degrades public perception about the fairness of the criminal justice system. In *R v Scott* [2005] NSWCCA the court has this to say;

“There is a fundamental and immutable principle of sentencing that this sentence imposed must ultimately reflect the objective seriousness of the offence committed and there must be a reasonable proportionality between the sentence passed in the circumstances of the crime committed...one of the purposes of punishment is to ensure that an offender is adequately punished...a further purpose of punishment is to denounce the conduct of the offender.”

6. On the whole from the material presented before this court and given the principles in *Bernard Kimani Gacheru v Republic* (2002) eKLR the applicant has failed to convince this court that there exist compelling and substantial circumstances to review the sentence of 10 years imprisonment imposed by the trial court. It seems unlikely that the sentence is punitive, harsh or excessive to have it reduced to any other less applicable sentence as canvassed by the applicant. The safeguards on review or on appeal of sentence has pronounced by the Court of Appeal in the *Bernard Kimani Case* (*supra*) has not been surmounted by the applicant. In this respect the application on review of sentence is dismissed under Section 382 of the *CPC*.

**DELIVERED, DATED AND SIGNED AT LODWAR ON THIS 16TH DAY OF FEBRUARY, 2024**

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**R. NYAKUNDI**  
**JUDGE**

