



REPUBLIC OF KENYA



**Kiprotich v Republic (Criminal Revision E125 of 2024)  
[2024] KEHC 6869 (KLR) (11 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6869 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E125 OF 2024  
RN NYAKUNDI, J  
JUNE 11, 2024**

**BETWEEN**

**MATHEW KIPROTICH ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

**Representation:**

Mr. Mark Mugun for the state

1. The applicant was charged with the offence of impersonation contrary to Section 31(c) of the Kenya National Examination Council Act. The particulars of the offence are that on the 7<sup>th</sup> day of November, 2022 at about 0900hrs at Eldoret National Polytechnic in Kapsaret sub-county within Uasin Gishu County with intent to defraud falsely represented himself to be Nathan Kipchumba (KNEC Examination candidate).
2. The applicant pleaded guilty to the offence before Hon. O. Mogire on 18<sup>th</sup> April, 2024 and as a consequence, he was convicted on his own plea of guilty and sentenced to a fine of Kshs. 1,000,000/= in default 2 years imprisonment.
3. The applicant has approached this court pursuant to sections 357,362,364& 382 of the Criminal Procedure Code as construed with Article 50(2) (p) & (q) and conjunctively read with Article 50(6) (a) &(b) of *the Constitution*.
4. The applicant seeks a sentence review based on the sentence review report on record. The report is favorable. The report records that the applicant has been in prison for two months but feels are long enough for him to regret his deeds. That if back to the society, the skills acquired at college will enable



him earn a living. The applicant is remorseful and pleads for leniency from this honorable court. He comes from a reliable family that is

5. ready to assist during his community-based rehabilitation. With this background, the probation officer recommended that the applicant is suitable for a non-custodial sentence. He has been recommended a probation sentence for a period of 14 months.
6. In determining whether to impose a non-custodial sentence, the court should consider the gravity of the offence, criminal history of the offender, character of the offender, protection of the community and the offender's responsibilities to third parties.

Punishment against an individual offender should not be used as a warning to the general public because this is punishing an offender for wrongs he has not committed yet. First and foremost, there are long sentences imposed as a deterrence measure without the purpose of factoring in rehabilitation and transformation of the offender. There is always a reluctance by trial courts to prefer deterrence as a justification for punishment even if it is disproportionate to the offence charged. In the comparative case of *S v Makwanyane* 1995 3 SA 391 (CC) made the following observations. That if general deterrence reduces an offender to a "guinea pig" then it should be a wholly objectionable goal of punishment regardless of the state of the offender. The instrumentalization of an offender violates the right to human dignity which is guaranteed in our Article 28 of *the constitution*. The age or criminal record of an offender is of no consequence. Otherwise compliance with equality before the law and freedom from non-discrimination in Art. 27 of *the constitution* may be called into question. In deterrence trajectory of sentencing, the principle of proportionality is removed even for first offenders, those who have entered plea of guilty, or those with mitigatory factors which favour a non-custodial sentence. The court also in *Rep v Kholoviko* (1996) MLR 355 took this view on consideration of the negative consequences of long sentences both on a convict and others including victims like spouses and children of the offender/convict. "The courts must also consider how such long sentences that are advocated can deter other accused persons, present as well as future ones. There is no evidence that these offences have reduced by reason of long sentences. In fact, they are on the increase. For first time offenders, not only common sense but the law as well, require[s] that they should not be sent to prison willy-nilly. They should only be sent to prison if there are real and compelling reasons for doing so. This court does not believe, nor is it convinced, that mere trend or level or even conventional sentences alone have any impact on the accused himself. It may have merit on generating confidence in the courts and promoting the concept of predictability of the sentences that the courts will impose generally, but there is no real impact on deterrence and reformation

7. The instant case presents an offence that is a perfect fit for a non-custodial sentence. I have considered the factors to consider when sentencing, the age of the offender being one of them. The offence is highly condemned and with a chance to serve a non-custodial sentence, let the applicant work out his life with a view of becoming a better person in the society. The applicant has since served 2 months in custody and with proper guidance he could equally benefit from a non-custodial sentence. Consequently, the effective measure as recommended by the probation officer is to have the applicant serve the remainder of his sentence on a probation sentence 14 months. It is necessary that during the period under review while the applicant is serving probation sentence, quarterly reports be filed in court by the probation officer to capture the elements of restorative justice in this case.

**SIGNED, DATE AND DELIVERED AT ELDORET THIS 11<sup>TH</sup> DAY OF JUNE 2024.**

.....

**R. NYAKUNDI**

**JUDGE**

