Cheptoo v Republic (Criminal Revision E456 of 2024)
[2025] KEHC 13556 (KLR) (30 September 2025) (Ruling)

Neutral citation: [2025] KEHC 13556 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CRIMINAL REVISION E456 OF 2024

RN NYAKUNDI, J

SEPTEMBER 30, 2025

BETWEEN

LORNA CHEPTOO ..... APPLICANT

AND

REPUBLIC ..... RESPONDENT

RULING

1. Before the Court is an application undated seeking the following orders:
    a. That may the Honourable Court be pleased to certify this application as urgent and be heard on priority basis.
    b. That the honorable Court to consider an option of fine or non-custodial sentence.
    c. That may the honourable court grant any other order it finds fit to grant based on the aforementioned facts stated in the sworn affidavit.
2. The application is supported by an affidavit sworn by the Applicant who deponed as follows:
    a. That I was convicted on own plea of guilty and sentenced to serve 2 years for the offence of cruelty to a child contrary to section 154(1) of the Penal Code, Count (ii) and (iii) each 4 years for the offence of grievous harm contrary to section 234 of the Penal Code all sentences to run consecutively.
    b. That I am humbly requesting for an option of a fine or to be admitted on non-custodial terms.
    c. That I was convicted as a first offender, remorseful and reformed thus beg for the leniency of the court to review the same.
    d. That I am a widow and sole bread winner.

e. That may the honorable court be pleased to consider Art 54(a) (c) (d) of *the constitution* of Kenya 2010 along with the Judiciary Sentencing Policy Guidelines 2023, in granting the relief sought or any other appropriate order.

f. That I have learned a valuable lesson from my time in prison and assure the court that I will not engage in any criminal activity.

Decision

3. The Applicant in this case was tried, found guilty, convicted, of the following offences firstly of cruelty to a child with brief facts being that on 15th September 2024 at [Particulars Withheld] Turbo Sub County, Uasin Gishu County being a mother to VC a child aged 8 years and BC a child aged 6 years willful unlawfully subjected them to cruel treatment burning them with a hot spoon on their cheek thighs. Secondly, the offence of grievous harm with the brief facts being that on 15th September 2024 at around 1800hrs at [Particulars Withheld] Turbo Sub County, Uasin Gishu County willfully and unlawfully did grievous harm to VC a child aged 8 years. Thirdly, the offence of grievous harm with the brief facts being that on 15th September 2024 at around 1800hrs at [Particulars Withheld] Turbo Sub County, Uasin Gishu County willfully and unlawfully did grievous harm to BC a child aged 6 years.

4. It is from these indictments the Applicant on her own plea of guilty was found guilty and sentenced as follows:Count I cruelty to a child contrary to section 152(1) (a)Count II Grievous harm contrary to section 234 of the penal codeCount III Grievous harm contrary to section 234 of the penal code

5. The review of sentence is usually guided the provisions of Art 50(2)(p)(q), 6(a) (b) of *the constitution* as read and construed wit section 362 of the CPC. If one was to borrow a leave from the principle of review on the civil branch of law under section of the CPA and Order 45 of the CPR review against an existing decision of the court can only succeeded if the following grounds remains sustained from the affidavit evidence or submissions of the applicant. In Order 45 Rule 1 the rules provide as follows:

    1. Any person considering himself aggrieved-

        a. by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

        b. by a decree or order from which no appeal is hereby allowed, and whom from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.

    2. A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review

6. These principles together with the constitutional demands made under Art 50(6) (a) (b) of *the Constitution* an Applicant must meet the threshold of new compelling evidence for a new trial to be

ordered with regard on sentence. For this Court to review the sentence the Court of Appeal guidelines in the Bernard Gacheru v R [2002] eKLR must be satisfied by the appellant:

> " 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, the 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 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."

7. Sentencing courts are given significant deference on appeal that is the very reasons that an appellate court like the one I preside over as a trial Magistrate has broad discretion to impose the sentence he or she considered within the limits established by law. The standard of interference of a sentence of a trial Court and the threshold which go with it is as stated in R v M(CA) [1996] 1 SCR 500 in which the following observations were made:

> This deferential standard of review has profound functional justifications. where the sentencing judge has had the benefit of presiding over the trial of the offender, he or she will have bad the comparative advantage of having seen and beard the witnesses to the crime. But in the absence of a full trial, where the offender bas pleaded guilty to an offence and the sentencing Judge has only enjoyed the benefit of oral and written sentencing submissions..., the argument in favour of deference remains compelling. A sentencing Judge still enjoys a position of advantage over an appellate Judge in being able to directly assess the sentencing submissions of both the Crown and the offender. A sentencing Judge also possesses the unique qualifications of experience and judgment from having served on the front lines of our criminal justice system. Perhaps most importantly, the sentencing Judge will normally preside near or within the community which has suffered the consequences of the offender's crime. As such, the sentencing Judge will have a strong sense of the particular blend of sentencing goals that will be "just and appropriate" for the protection of that community. The determination of a just and appropriate sentence is a delicate art which attempts to balance carefully the societal goals of sentencing against the moral blame-worthiness of the offender and the circumstances of the offence, while at all times taking into account the needs and current conditions of and in the community. The discretion of a sentencing Judge should thus not be interfered with lightly.
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> Appellate courts, of course, serve an important function in reviewing and minimizing the disparity of sentences imposed by sentencing judges for similar offenders and similar offences committed throughout Canada... But in exercising this role, courts of appeal must still exercise a margin of deference before intervening in the specialized discretion that Parliament bas explicitly vested in sentencing judges. It has been repeatedly stressed that there is no such thing as a uniform sentence for a particular crime ... Sentencing is an inherently individualized process, and the search for a single appropriate sentence for a similar offender and a similar crime will frequently be a fruitless exercise of academic abstraction. As well, sentences fora particular offence should be expected to vary to some degree across various communities and regions in this country, as the "just and appropriate" mix of accepted sentencing goals will depend on the needs and current conditions of and in the particular community where the crime occurred...

8. In the sentence regime Judicial Officers have an inherent right to tamper their justice with mercy. This is not the same thing as mitigation, for unlike mitigation mercy is not owed to an offender or a convict of rights as compassion and mercy have no specifics grounds in which they are underpinned. These concepts when it comes to sentencing are rarely invoked or less frequently applied by the sentencing Judge. Criminal sanctions are not merely intended to be painful in themselves, they are also an act of public censure. This ensure is registered in the conviction which is permanent diminution of the offender's legal status.

9. This is one case I am sympathetic to some of the issues raised by the Probation Officer in the report about the victims of the offence who also happens to be the biological children of the convict on review of sentence. This far there is no evidence that the Applicant/convict was suffering from any mental infirmity when she armed herself with the dangerous hot spoon used it to grievously occasion harm against her own defenseless and innocent minors of tender ages. These victims of the offence at this stage no matter psychological intervention being suggested by the Probation Officer they will never come to terms with the trauma and stigma as a result of this heinous crime from their own mother whose society looks up to protect and guarantee survival rights of her children. This punishment inflicted to the victims of this offence is equivalent with the one outlawed in *the Constitution* in Art 25 (a) freedom from torture and cruel, inhuman or degrading treatment or punishment. There are no grounds of provocation on the part of the children and victims of this offence which could have necessitated the torture and ill treatment by the Applicant/convict upon her own children. The Applicant/convict has sufficient time and opportunity to reflect on her conduct before and during inflicting injuries against her children under the guides of discipline. The photography impression presented before the trial Court by the prosecution paints a picture of a person who was persistent in assaulting the children as if she was seeking a kind of revenge and ultimately the entire spectrum of the wounds are permanent scar of the nature in which forgiveness might take a long time to come true between these two family members of the same umbilical cord. The Applicant/convict had sufficient time to call or halt the scheme of assaulting her children but she never stopped in continuing on this tragedy upon her own children. This victim offender mediation being suggested by the Probation Officer would take time and it is only when the psychologists are professionally engaged in the interim period can this court truly take the recourse of restorative justice in this case. As of now the Applicant/convict is not eligible to parole for an early release so that her sentence can be reviewed and substituted with non-custodial sentence. The application is therefore dismissed.

DATED, SIGNED AND DELIVERED VIA EMAIL AND CTS AT ELDORET THIS 30TH SEPTEMBER 2025

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R. NYAKUNDI

JUDGE