Tanui v Republic (Miscellaneous Criminal Application E093 of 2024)
[2025] KEHC 13474 (KLR) (29 September 2025) (Ruling)

Neutral citation: [2025] KEHC 13474 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

MISCELLANEOUS CRIMINAL APPLICATION E093 OF 2024

RN NYAKUNDI, J

SEPTEMBER 29, 2025

BETWEEN

JOSEPH KIMUTAI TANUI ..... APPLICANT

AND

REPUBLIC ..... RESPONDENT

RULING

1. Before this court is an application dated 19th day of August 2024 seeking the following orders:
    a. Spent
    b. That, I am the Applicant herein seeking for sentence review in Criminal Case No. 3503/2018 to serve the remaining period of the sentence on probation.
    c. That, I humbly pray that the Honorable Court orders a social inquiry report to aid in making a more informed and appropriate decision regarding the relief sought.
2. The application is supported by the Applicant's affidavit stating as follows:
    a. That, I was charged and convicted of the offense of grievous harm contrary to Section 234 of the Penal Code in Criminal Case No. 3503/2018 at Eldoret Chief Magistrate's Court.
    b. That, my first appeal to the High Court at Eldoret succeeded partially, where the period I spent in remand custody was considered in my 15-year sentence.
    c. That, I did not appeal to the Court of Appeal therefore, I now make this application for a review of my sentence.
    d. That, after thorough soul-searching and self-reflection on the facts presented during the trial, I take full and personal responsibility for the offense I was charged with.

e. That, I have deeply felt the consequences of my actions, and the over five (5) years I have spent in custody have provided valuable lessons, leading me to fully accept responsibility for my actions.

f. That, I humbly beg for a second chance, having successfully completed substantive rehabilitation programs offered in prison, which have fully transformed my life.

g. That I was convicted and sentenced as a first offender, and I therefore plead for leniency from this Honorable Court to review the remaining part of my sentence to probation.

h. That this Honorable Court has the jurisdiction under Article 165(3)(b) of *the Constitution* of Kenya, 2010, to hear and determine this matter.

i. That, I am a pauper and unable to bear the costs associated with preparing this application. And I humbly pray that such costs be waived

Decision

3. Before the advent of *the Constitution* 2010 the aims and objectives of punishment were largely deduced from the protocols of criminal law. In the common law jurisdiction which is the foundation of a criminal justice system it was recognized that the aim of the administration of the criminal branch of law was not just retribution but also to prevent crime. That therefore was the primary purpose of punishment. This is what the Court had to say in R v Robert [1961-1963] 2 ALR Mal 291 (HC) 293;

> The first and foremost [consideration in sentencing] is the public interest. The criminal law is publicly enforced, not only with the object of punishing crime, but also in the hope of preventing it. A proper sentence passed in public serves the public interest in two ways. It may deter others who might be tempted to try a crime seeming to offer money on the supposition that if the offender is caught and brought to justice the punishment will be negligible. Such a sentence may also deter the particular offender from committing a crime again or induce him to turn from criminal to honest living.

4. A reasonable and proper sentence is one that is appropriate to the offence. The Applicant in this matter aggrieved with both conviction and sentence appealed to the High Court which dismissed the said appeal for lack of merit save for the pretrial detention period served by the Applicant pending the hearing and determination of the charge sheet and his culpability in committing the offence. The credit period was factored in the 15 years custodial sentence.

5. The record is very clear that the Applicant was tried, convicted and sentenced to the foresaid period of 15 years for the offence of grievous harm contrary to Section 234 of the Penal Code. He has now moved the Court to review the sentence further by committing to a non-custodial sentence

6. The first principle to be borne in mind that the infliction of punishment is preeminently a matter of the pretrial court. In this legal system the fact that trial courts should as far as possible have an unfettered discretion to imposing a sentence against an accused at the end of the trial and a finding of guilty and conviction is a cherished principle which cannot be departed from by an appeal's court unless on points of law. In terms of legislation the punishment prescribed for the offence of grievous act is that of life imprisonment. What stands out quite clearly is that this court is being asked to sit on appeal against a decision made by a different session Judge of the High Court. There is no such jurisdiction conferred upon this court. The point of departure will only be if the Applicant was to bring himself within the provisions of Art 50 (6) (a) (b) of *the Constitution*. The phrase 'new compelling evidence' has given rise to much debate on the wide range of interpretation so as to bring the issues of a new trial into perspective. In this case however the nature of the circumstances cannot convince a reasonable

mind that the Applicant has adduced new compelling evidence to entertain a new trial on matters of sentence.

7. Consequently, this matter is res judicata and the review on sentence fails. For avoidance of doubt the standing of sentence of 15 years is re-affirmed.

8. It is so ordered.

DATED, SIGNED AND DELIVERED VIA EMAIL AND CTS AT ELDORET THIS 29TH SEPTEMBER 2025

.....

R. NYAKUNDI

JUDGE