



**Chepknong v Republic (Criminal Miscellaneous Application
E155 of 2024) [2025] KEHC 14095 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14095 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL MISCELLANEOUS APPLICATION E155 OF 2024
RN NYAKUNDI, J
OCTOBER 9, 2025**

BETWEEN

NOAH KIPKEMBOI CHEPKNONG APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this court is an application dated 8th day of November 2024 seeking the following orders:
 - a. That, the petitioner is seeking for a declaratory order that my rights to a fair hearing for a less severe sentence under article 50 (2)(p) of the constitution of Kenya violated.
 - b. That, the petitioner is seeking for orders declaring his sentence was improper under article 25 of the constitution of Kenya where non-application of sentencing principle limited my right to be sentenced to an appropriate or lenient sentence.
 - c. That, the petitioner is seeking for a declaratory order for being discriminated against on the ground of social status (Step-Father) that the sentence he is serving denied him the benefit of a less or appropriate sentence under article 27 (1) & (4) of constitution of Kenya on the above reasons.
 - d. That, the petitioner is seeking judicial relief for violation of the above listed rights under article 23 of constitution of Kenya

It is Further annexed the affidavit which states as follows:

- a. That, I am a Kenyan citizen who is an adult male of sound mind hence competent to swear this affidavit.



- b. That, I was charged with defilement c/sec 8 (1) as read with sec 8 (3) of the S.O.A no.3 of 2006, was sentenced to 30 years in the CM's court at Eldoret by Hon. C.R.T. Ateya (SRM) on 22-04-2022.
- c. That, I was aggrieved with the above decision and filed appeal no. E023 of 2021 at Eldoret which was not successful as it was dismissed by Hon. Justice Muhochi on 13-06-2023.
- d. That, the petitioner filed a criminal revision no. E081 of 2023 at Eldoret High court which was dismissed.
- e. That, the petitioner is now approaching this honourable court to seek for a redress on the violation of his constitutional right on the following violations of his right to a fair trial on his sentencing;-
 - a. That, the trial magistrate imposed on me an unusually excessive and harsh sentence of 30 years imprisonment which denied me a benefit of a less severe sentence under article 50(2) (p) of the constitution of Kenya. This court has a good ground to interfere with the discretion of imposing a manifestly excessive sentence of 30 years. Reliance placed on Shadrack Kipkoech Kogo vs R in Eldoret C.A No. 253 of 2013.
 - b. That the sentencing court did not apply the sentencing principles of mitigation, proportionality fairness, transparency in his case and violated the right to a fair trial under article 25 of the constitution which is evidenced by the enhanced sentence of 30 years. The trial court limited his right to a fair trial.
 - c. That, the sentencing court did not consider the principle of equality, uniformity & non-discrimination under article 27 (1) & (4) of constitution of Kenya that influenced his enhanced sentence of 30 years due to his social status on being a step father of the complainant. The minimum sentence under sec 8 (1) & 8 (3) of SOA is 20 years.
 - d. That, the petitioner prays for remedy of the above violations on the sentencing decision and prays for a sentence reduction to about 10 years or any other relief that this honourable court deems fit

Decision

2. The applicant in this case upon a full trial was sentenced to thirty years imprisonment, he is aggrieved with sentence and has filed this petition seeking a review of the verdict with that of a lesser term imprisonment.
3. In delving to this question I bear in mind the principles and objectives of sentencing in a criminal offence which include inter alia:Retribution: to satisfy the feeling of vengeance in the mind of victim and the large number of people who share the agony of victimPrevention: to take away from the offender the power of offendingDeterrence: to make the offender afraid of consequences, if the similar act is repeated (intimidation) and to create awe in the minds of the persons who are disposed to commit similar offences.Reformation: to remove the desire of punishment from the mind of wrongdoer.



4. Concerning the sentence under review the court has also to take into account the elucidative principles in the case of *Bernard Gacheru vs Republic* [2002] eKLR the court held that:

“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.”

5. It is an elementary proposition in law when it comes when it comes to the criminal justice system and an accused person has been found guilty, duly convicted any such sentence imposed must be proportionate to the gravity and nature of the crime. These were the principles articulated in the persuasive case of *Mohamed Hanif vs. Emperor* AIR 1942 Bom 215. That:

In the first place, it is necessary to pass a sentence upon him which will make him realise that a life of crime becomes increasingly hard, and does not pay. In the second place, the sentence should serve as a warning to others who may be thinking of adopting a criminal career. In the third place, the public must be protected against people who show that they are going to ignore the rules framed for the protection of society.

6. In dealing with adjudication of criminal cases involving our citizens and other persons alike I have come to appreciate the conceptual framework of crime as prescribed by the court in *Sato vs. State of U.P* (1979) 2SCC628 that crime is like disease, and correction, not cruelty, has dominance in the sentencing calculus. That may be the reason why the Supreme Court in *Mohammed Giasuddin vs. Andhra Pradesh* (1977) 3SCC287 made the following observations:

If every saint has a past, every sinner has a future and it is the role of law to remind both of this. The Indian legal genius of old has made a healthy contribution to the world treasury of criminology. The drawback of our criminal process is that often they are built on the bricks of impressionist opinions and dated values, ignoring empirical studies and deeper researches. Progressive criminologists across the world will agree that the Gandhian diagnosis of offenders as patients and his conception of prisons as hospitals-mental and moral-is the key to the pathology of delinquency and the therapeutic role of 'punishment' The whole man is a healthy man and every man is born good. Criminality is a curable deviance. The morality of the law may vary, but is real. The basic goodness of all human beings is a spiritual axiom, a fall-out of the advaita of cosmic creation and the spring of correctional thought in criminology.

7. Sometime I hear words justice to the victim, justice to the society when courts impose what is considered appropriate sentence against an offender in the eyes of the victim or the public. This maybe in line with the objective of sentence described as deterrence and retribution. It was further observed by the court in *Hazara Singh vs. Raj Kumar* (2013) 9 SCC 516. Thus:

“The punishment awarded should be directly proportionate to the nature and the magnitude of the offence. The benchmark of proportionate sentencing can assist the judges in arriving at a fair and impartial verdict. This court further observed that the cardinal principle of



sentencing policy is that the sentence imposed on an offender should reflect the crime he has committed and it should be proportionate to the gravity of the offence.”

8. A proper sentence is a compromise of many factors. In section 329 of the CPC provides the court may, before passing sentence, receive such evidence as it thinks fit in order to inform itself as to the proper sentence to be passed.
9. Therefore, in the instance case from my reading of provisions of section 8(3) of the *Sexual Offences Act* the legislature in their wisdom expressly stated the sentence to be imposed not less than 20 years imprisonment. With regard to the learned trial magistrate decision the applicant was awarded a 30 years custodial sentence. Thus the judgment is not crystal clear on the incremental or enhancement of the sentence with a further two-digit period of 10 years on and above the minimum of 20 years enacted by the legislature. The trial court should impose an appropriate custodial sentence for a term at least the required minimum term unless the court is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so.
10. With respect to the trial court on the issue of 30 years imprisonment far beyond by 10 years above the minimum sentence of 20 years I invoke the principles in the Bernard Gacheru case (supra) to review it downwards to the prescribed sentence of 20 years of the offence. This application on sentence succeeds in terms of Art 50 (2) (p) (q) of the *constitution* as construed with section 362 of the CPC for the discretion exercised by the trial court failed to follow the law in the circumstances in which no reason was given for the enhancement of the sentence.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 9TH DAY OF OCTOBER, 2025

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R. NYAKUNDI

JUDGE

