Republic v Masinde (Anti-Corruption and Economic Crimes Case E036 of 2024) [2025] KEMC 203 (KLR) (28 August 2025) (Sentence)

Neutral citation: [2025] KEMC 203 (KLR)

REPUBLIC OF KENYA

IN THE ANTI-CORRUPTION MAGISTRATE'S COURT

ANTI-CORRUPTION AND ECONOMIC CRIMES CASE E036 OF 2024

CN ONDIEKI, PM

AUGUST 28, 2025

BETWEEN

REPUBLIC .... PROSECUTOR

AND

LAWRENCE BARASA MASINDE .... ACCUSED

SENTENCE

Part i: Introduction

1. On 18th October 2024, the Accused was arraigned in Court and charged with 4 Counts of diverse offences as follows:

    a. Under Count I, the Accused was charged with the offence of fraudulent acquisition of public property contrary to section 45(1)(a) as read with section 48 of the *Anti-Corruption and Economic Crimes Act*, No. 3 of 2003 (hereinafter "ACECA"). The particulars of the offence were that between August 2016 and November 2023 within Nairobi City County in the Republic of Kenya, being a public officer employed by Nairobi City Water and sewerage Company Limited (hereinafter "NCWSC") as an ICT Assistant, the Accused fraudulently acquired public property to wit Kshs. 7,173,963 being salary paid to him by NCWSC upon employment based on academic Certificates namely Diploma in Information Technology allegedly awarded by Eldoret National Polytechnic on 13th September 2010, a fact the Accused knew to be false.

    b. Under Count II, the Accused was charged with the offence of forgery contrary to section 345 as read with section 349 of the Penal Code. The particulars of the offence were that on an unknown date and place within the Republic of Kenya, with intent to deceive, the Accused forged a Diploma in Information Technology Certificate awarded in the name Barasa M.

Lawrence purporting it to be a genuine document issued to him by the Eldoret National Polytechnic on 13th September 2010, a fact the Accused knew to be false.

c. Under Count III, the Accused was charged with the offence of uttering a false document contrary to section 353 of the Penal Code. The particulars of the offence were that on or about the 7th day of October 2016 at NCWSC within Nairobi County in the Republic of Kenya, the Accused knowingly and fraudulently uttered a false document namely a Diploma in Information Technology Certificate purporting it to be a genuine document issued to the Accused by Eldoret National Polytechnic, a fact the Accused knew to be false.

d. Under Count IV, the Accused was charged with the offence of deceiving a principal contrary to section 41(2) as read with section 48 of ACECA. The particulars of the offence were that on or about the 7th day of October 2016 at NCWSC within Nairobi County in the Republic of Kenya , being a public officer employed by NCWSC as an ICT Assistant, to the detriment of the said company, the Accused knowingly and intentionally deceived his principal by stating that he is a holder of professional qualification of a Diploma, grade pass, the Eldoret National Polytechnic information which the Accused filled in his personnel Record Form and submitted it to NCWSC for the purposes of updating his records.

2. The Accused denied the truth of each charge and consequently, the matter proceeded for hearing.

3. Upon full trial, the Accused was found not guilty of the offence set out under Count II and acquitted therefrom, but guilty of the offences set out under Counts I, III and IV and accordingly convicted.

Part ii: General legal principles which govern sentencing

4. Every Accused person has the right to a fair trial, guaranteed under Article 50 (2) of *the Constitution*. Needless to restate, this right is absolute. See Article 25(c) of *the Constitution*. Sentencing is part of the trial contemplated by Article 50(2) of *the Constitution* and in this context, part and parcel of the right covered by the fair trial principle. Accordingly, the Accused is entitled to fair sentencing which embraces the principles of fair trial. It follows that before handing down a sentence or making an order against an Accused person under section 215 of the Criminal Procedure Code (hereinafter "the CPC"), the Accused must be heard and the Court should receive such evidence as it thinks fit in order to inform itself as to the sentence or order properly to be passed or made. See section 216 of the CPC and Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae) (Petition 15 & 16 of 2015 (Consolidated)) [2017] KESC 2 (KLR) (14 December 2017) (Judgment), paragraphs 46-49, et alia.

5. The key purposes served by a sentence include: (a) punishing the offender for his/her criminal conduct in a just manner, which is conceptually described as retribution; (b) deterring the offender from committing a similar offence subsequently as well as to discourage other similar-minded persons from committing similar offences, which is conceptually described as deterrence; (c) enabling the offender to reform from his criminal disposition and become a law-abiding person, which is now conceptually described as rehabilitation; (d) addressing the needs arising from the criminal conduct such as loss and damages, through for instance compensation, which is conceptually described as restorative justice; (e) promoting a sense of responsibility through the offender's contribution towards meeting the victim's needs; (f) protecting the community by incapacitating the offender through imprisonment, where necessity so militates; and (g) communicating the community's condemnation of the criminal conduct, which is now conceptually described as denunciation.

6. Sentencing is a discretionary power of the Court. However, the discretion should be exercised judiciously, dictated by relevant factors including but not limited to the purposes of sentencing,

evidence adduced by the prosecution for or against the Accused; evidence adduced in mitigation by the Accused and diverse principles enunciated thereon by superior Courts. See the judicial view of the Court of Appeal in Shadrack Kipchoge Kogo v Republic [2015] eKLR.

7. Although I entertain no doubt in my mind that I am reposed with discretionary power in this regard, “It is trite that no power, however widely expressed, confers an unfettered discretion on a decision-maker” so said elegantly expressed it Elisabeth Laing LJ, in the most recent England and Wales Court of Appeal decision - handed down on 11th December 2024 - in HSBC Bank PLC vs. Chevalier-Firescu [2024] EWCA Civ 1550, at paragraph 74. This Court is thus of the Judicial persuasion that although it cannot be gainsaid that this Court is clothed with discretionary power in sentencing, it will certainly be incorrect to hold that its unfettered.

8. The principal guiding edict of discretionary power is that it ought to be exercised to serve, and not defeat justice. See Mbogo and Another vs. Shah [1968] EA 93. It should thus be exercised judiciously, which essentially mean that the exercise thereof should not be fickle, capricious, volatile, impulsive, arbitrary, whimsical, but it should be rationalized with rules of reason, justice, facts and the law. See Christopher Kiprotich vs. Daniel Gathua & 5 others [1976] eKLR; and Mohindra vs. Mohindra (1953) 20 EACA 56. Speaking of discretion, Lord Halsbury L. C., in the case of Sharp vs. Wakefield [1891] 64 L.T Rep. 180 Ap. Ca.173 held that: “When it is said that something is to be done within the discretion of the authorities, that thing is to be done according to the rules of reason and justice, not according to private opinion, according to law and not humour. It is not to be arbitrary, vague and fanciful but legal and regular. It must be exercised within the limit to which an honest man, competent to the discharge of his office, ought to confine himself.” In Rooke’s case, 5 Rep. 99b (1598), adverted to in approval by Mativo, J. in Republic vs. Public Procurement Administrative Review Board & 2 others [2018] eKLR, the Court attempted a definition of discretion as follows: “Discretion is a science, not to act arbitrarily according to men’s will and private affection: so the discretion which is exercised here, is to be governed by rules of law and equity, which are to oppose, but each, in its turn, to be subservient to the other. This discretion, in some cases follows the law implicitly, in others or allays the rigour of it, but in no case does it contradict or overturn the grounds or principles thereof, as has been sometimes ignorantly imputed to this Court. That is a discretionary power, which neither this nor any other Court, not even the highest, acting in a judicial capacity is by *the Constitution* entrusted with.”

9. Pursuant to section 216 of the CPC, it’s incumbent upon this Court, before handing down a sentence under section 215 of the CPC, to invite the Accused to give evidence relative to properly informing the Court to pass an appropriate sentence. It reads thus: “The Court may, before passing sentence or making an order against an Accused person under section 215, receive such evidence as it thinks fit in order to inform itself as to the sentence or order properly to be passed or made.”

10. Some of the principles which act as guiding rays include proportionality, appropriateness, adequacy, rehabilitation and deterrence. In the High Court decision in Mareen Kathure vs. Republic [2018] eKLR, Gikonyo, J. restated the purpose of sentencing afore-outlined and further set out some principles in sentencing in the following words: “Imposition of punishment is a matter for the discretion of the Court. Except, the Court must consider the facts and circumstances of each case in order to impose punishment... Thus, in exercising its discretion in sentencing, the Court should bear in mind the principles of proportionality, deterrence and rehabilitation. In assessing proportionality, take into account mitigating and aggravating factors, the impact of the crime on the victims and the need to make any order for compensation or forfeiture. I need not remind that victims of crime now occupy rightful position in *the Constitution*...That is not to say, however, that prison terms cannot be imposed alone where there is an option of fine if it is the most appropriate sentence in the circumstances of the case.”

11. In the Supreme Court of India decision in Alister Anthony Pareira vs. State of Maharashtra, [2012] 2 S.C.C. 648, cited and adopted in Mareen Kathure vs. Republic [2018] eKLR, by Gikonyo, J., it was held that a sentence should be: "…appropriate, adequate, just and proportionate… commensurate with the nature and gravity of the crime and the manner in which the crime is done… motive for the crime, nature of the of the offence and all other attendant circumstances."

12. Although this Court is alive to the legal position that section 137I of the Criminal Procedure Code is applicable to Plea Agreements, I find it strongly persuasive as to some of the key factors to consider when sentencing. It requires that a Court may invite the parties to address it on the issue of sentencing and in particular, receive considerations relevant to the evidence contemplated in section 216 thereof including the period spent in custody; the victim impact statement; the stage at which the Accused decided to enter into plea; the nature and amount of restitution or compensation agreed and a probation officer's report. The text thereof reads thus: "(1) Upon Conviction, the Court may invite the parties to address it on the issue of sentencing in accordance with section 216. (2) In passing a sentence, the Court shall take into account— (a) the period during which the Accused person has been in custody; (b) a victim impact statement, if any, made in accordance with section 329C; (c) the stage in the proceedings at which the Accused person indicated his intention to enter into a plea agreement and the circumstances in which this indication was given; (d) the nature and amount of any restitution or compensation agreed to be made by the Accused person. (3) Where necessary and desirable, the Court may in passing a sentence, take into account a probation officer's report."

13. The period taken in custody is not a discretionary power of the Court to consider but rather a mandatory period to account for in sentencing. Section 333 of the Criminal Procedure Code provides that subject to the provisions of section 38 of the Penal Code, every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in the Code, provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period. The text of section 333 of the CPC aforesaid reads: "(1) A warrant under the hand of the judge or magistrate by whom a person is sentenced to imprisonment, ordering that the sentence shall be carried out in any prison within Kenya, shall be issued by the sentencing judge or magistrate, and shall be full authority to the officer in charge of the prison and to all other persons for carrying into effect the sentence described in the warrant, not being a sentence of death. (2) Subject to the provisions of section 38 of the Penal Code (Cap. 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code. Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody."

14. In the High Court decision in Muia Kivindyo vs. Republic [2019] eKLR, D.K. Kemei, J. held that the trial Court has an obligation to take into account the period of time spent in custody as part of the time served in sentencing. His Lordship rendered himself thus: "5. I have considered the submissions made before me in this appeal. The singular issue to be determined is whether the Court may make a downward review of the sentence by the trial Court. 6. Section 333(2) of the Criminal Procedure Code provides that: (2) Subject to the provisions of section 38 of the Penal Code every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code. Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody. 7. It is therefore clear that the foregoing provision imposes an obligation on the trial Court to take into account the period an Accused has spent in remand in the determination of an appropriate sentence. Failure to comply with the foregoing provision renders the subsequent

sentence a contravention of the law....10. The trial magistrate is vested with wide discretion which an appellate Court can only interfere with, if it occasioned a failure of justice, and justice will apply both ways to the victim and to the Accused. In the instant appeal a miscarriage of justice has occurred to the applicant since the period spent in custody was not factored and this warrant a need to interfere with the sentence, of 3 years. I find an illegality of principle when the learned magistrate sentenced the appellant to 3 years imprisonment instead of discounting one year spent in custody. As the maximum sentence for the offence is three years imprisonment the applicant ought to have been sentenced to two years imprisonment."

15. In regard to offenders and of all the offenders, first offender Convicts are the most favourite children of the law and in that light, a lot of judicial ink has been shed in their favour. For instance, Madan, J. (as he then was), had occasion to give directions to subordinate Courts to the effect that where fine is an option, it should be given priority irrespective of an Accused person's earning capacity unless the circumstances of the case irresistibly preclude this mode of punishment. In Mita vs. R [1969] E.A. (hereinafter "the Mita case"), where Madan, J. (as he then was) stated that "Before passing sentence the learned Magistrate pointed out that the appellant was a first offender, [who] appeared sorry and repentant. He added that this was, however, a very violent and unattractive act, although the appellant may have been provoked by the attempt to expel her from the premises ...The learned Magistrate ended up by saying he did not think a fine would serve any purpose as the appellant appeared to be earning a lot of money ...With respect I think the learned Magistrate did not assign enough emphasis to the appellant's contrite condition and the fact that she was a first offender ...I am also of the opinion that the learned Magistrate misdirected himself when he said the act of biting a man's face is hardly justifiable. At no stage has the appellant tried to justify her act ...I think irrespective of an Accused person's earning capacity it is not wrong to impose a fine unless the circumstances of the case irresistibly preclude this mode of punishment which is not the case here...I think the interests of justice will be met if I set aside the sentence of imprisonment and substitute therefor a fine of Kshs.400/=; in default, two months' imprisonment."

16. The judicial view expressed in the Mita case was adopted by Mwera, J. (as he then was) in Annis Muhidin Nur, High Court at Nairobi, Criminal Appeal No. 98 of 2001 (hereinafter "the Muhidin case") stated this policy in sheer simplicity as follows: "... unless circumstances obtain which irresistibly [impede] a trial Court from imposing a fine first where the law provides for a fine in default of a prison term, the option of a fine must be visited first. This is a sound and tested principle in the art of sentencing ..."

17. While pronouncing himself on the stiffer fines for first offenders in lieu of imprisonment - where circumstances call for it - Makhandia, J. (as he then was) in Hamdi Hale Ahmed vs. Republic, Criminal Appeal No. 19 of 2007 (hereinafter "the Hamdi case"), citing in approval the principles laid in James v. Reg. (1950) 10 EACA (hereinafter "the James case"); Nilsson vs. Republic [1970] E.A. 599 (hereinafter "the Nilsson case") and Wanjema vs. Republic (1971) EA 493 (hereinafter "the Wanjema case"), stated as follows: "I do not think ... that was good-enough reason to tilt [the learned Magistrate's] hand towards a custodial rather than a non-custodial sentence. The same result can be obtained by imposing stiffer fines. The record also [reveals] that the learned Magistrate did not even consider the appellant's mitigation and the fact that he was a first offender. The appellant having been a first offender, a foreigner and considering our already over-stretched prison facilities, I would imagine that the most appropriate sentence would have been a fine and a repatriation order. Why should the Government be called upon to maintain a person in prison who is bound to be repatriated on completion of the prison [term]? Does it not make more sense that such a person be fined and repatriated forthwith, rather than the Government being called upon to spend the meagre resources on him in prison."

18. In embracing the reasoning of Makhandia, J. (as he then was), in Khali Abdiaziz Mohammud & 2 Others vs. Republic [2007] eKLR (hereinafter “the Khali case”), J.B. Ojwang, J. (as he then was), added his voice to the reasoning that first offenders should not be disproportionally punished by saying as follows: “It is clear too from other High Court decisions, as I have noted from the judgment of Makhandia, J aforesaid, that there is now a trenchant body of jurisprudence on sentencing, which carries a policy discouraging overkill in the imposition of prison terms, where the outcome of a prison term, far from inuring to the benefit of Kenya and Kenyans, merely dispenses vengeful penalty against aliens. Rather than teaching-a-lesson to an alien who will in any event depart, the policy of the law should be no more than to discourage a repeat of the offence; and the positive element in this policy will be advanced by allowing the alien to return to his own country with the good-will to be law-abiding there, among his compatriots.”

19. In Joseph Simiyu Mukwei vs. Republic [2017] eKLR (hereinafter “the Simiyu case”), S. Githinji, J. added his voice too. His Lordship reasoned that where an offence has an option of a fine and the offender is a first offender, then it is prudent and fair to consider fine as the first option and further argued that since fine counts a revenue to the state, it should be born in mind that when one is imprisoned in circumstances where the prisons are congested, it a custodial sentence is a burden to the state and the tax payer. His Lordship stated that “On the sentence, there could be an issue. The circumstances under which the offence was committed, the nature of injuries sustained by the complainant and appellant's Mitigation, should at least have been weighed to give him a fine option. Given that our prisons are congested, custodial sentence is a burden to the state and the tax payer, where an offence is fineable, and the Convict is a first offender, and there are no other aggravating circumstances, it’s always prudent and fair to consider fine as an option. Fine when paid is an income, while jail sentence is an expense to the state...”

Part iii: Specific law and legal principles which govern sentencing in corruption and economic crimes and allied offences

20. There are two classifications of punishments under ACECA namely discretionary punishments and mandatory punishments. Whereas section 48(1)(a) of ACECA houses the discretionary sentence, section 48(1)(b) prescribes the additional mandatory of a fine. Whereas the discretionary punishment is applicable to all offences under Part V of ACECA, the mandatory punishment is applicable only in circumstances where the charge sets it out and the prosecution proves beyond reasonable doubt that there was a quantifiable gain or loss. The dichotomy is reflected in the text of section 48 of ACECA which provides that “(1) A person convicted of an offence under this Part shall be liable to — (a) a fine not exceeding one million shillings, or to imprisonment for a term not exceeding ten years, or to both; and (b) an additional mandatory fine if, as a result of the conduct that constituted the offence, the person received a quantifiable benefit or any other person suffered a quantifiable loss. (2) The mandatory fine referred to in subsection (1)(b) shall be determined as follows — (a) the mandatory fine shall be equal to two times the amount of the benefit or loss described in subsection (1)(b); (b) if the conduct that constituted the offence resulted in both a benefit and loss described in subsection (1)(b), the mandatory fine shall be equal to two times the sum of the amount of the benefit and the amount of the loss.”

21. The punishment for uttering a false document is the same as that of forgery. Section 353 of the Penal Code therefore provides that “Any person who knowingly and fraudulently utters a false document is guilty of an offence of the same kind and is liable to the same punishment as if he had forged the thing in question.” In this connection, the punishment for forgery is prescribed by section 349 of the Penal Code which stipulates that “Any person who forges any document or electronic record is guilty of an

offence which, unless otherwise stated, is a felony and he is liable, unless owing to the circumstances of the forgery or the nature of the thing forged some other punishment is provided, to imprisonment for three years."

22. Proceeding on the principle that sentencing is a discretionary power of the trial Court which can only be upset on account of injudicious or unlawful sentence and that a punishment under section 48(1)(b) read with section 48(2)(a) of ACECA is lawful if the facts of the case avail themselves with the provisions, in Erick Otieno Oyare v Republic [2022] eKLR, Lucy Njuguna, J. upheld the mandatory fine which had been upheld by the High Court, equal to two times the amount of the benefit or loss under section 48(1)(b) of ACECA, read with section 48(2)(a) of ACECA, for the offence of fraudulent acquisition of public property. For the same holding, see also Boniface Okerosi Misera & another v Republic [2018] KEHC 5298 (KLR) (hereinafter "the Boniface Okerosi Misera & another case"), per Ong'udi, J.; John Faustin Kinyua v Republic [2020] eKLR, per Onyiego, J.; Rebecca Mwikali Nabutola & 2 Others v Republic [2016] eKLR, per Ngenye, J.; Cephas Kamande Mwaura v Republic [2018] KEHC 466 (KLR), per Ong'udi, J., et alia.

23. When the Boniface Okerosi Misera & Another case reached the Court of Appeal, now reported as Boniface Okerosi Misera & Another v Republic [2021] eKLR, proceeding on the principle that severity of a sentence is a matter of fact and that there was no demonstration by the Appellant that the sentence was either unlawful or handed down without jurisdiction to justify iinterference, the Court of Appeal (Nambuye, Murgor & Kantai, JJ.A.) declined to upset the mandatory fine which had been upheld by the High Court, equal to two times the amount of the benefit or loss under section 48(1)(b) of ACECA, read with section 48(2)(a) of ACECA, for the offence of fraudulent acquisition of public property.

24. However, having come to a conclusion that the discretionary power was not exercised judiciously in John Faustin Kinyua v Republic [2020] eKLR, the trial Court having handed down unequal sentences of custodial and non-custodial to two Accused persons on the same nature of offences without justifying, J. Onyiego, J. found this approach to have offended the parameters for consideration before sentencing namely equality, uniformity, parity, consistency and impartiality and eventually upset the sentence and substitute it with another.

25. Part of the principles which govern discretionary power of the Court in sentencing is that whenever there is an option of a fine in ACECA, the Court should first consider a fine as the punishment, unless the factors placed before the Court militate against imposition of a fine, in which case the trial Court is at liberty to consider a more punitive sentence. The trial Court having pronounced a justification of imposing a custodial sentence for a first offender in Boniface Okerosi Misera & another v Republic [2018] KEHC 5298 (KLR) (hereinafter "the Okerosi case"), at paragraphs 100-103, Ong'udi, J. substituted the custodial sentence with a fine. For the same reasons, in John Faustin Kinyua v Republic [2020] eKLR (hereinafter "the Kinyua case"), at paragraphs 104-106, J. Onyiego, J. substituted the custodial sentence with a fine.

26. Where there are two Accused persons, jointly charged with fraudulently obtaining a specified amount of money, without apportioning the exact amount for each, then for purposes of assessment of the benefit or loss under section 48(1)(b) of ACECA, read with section 48(2)(a) of ACECA, the amount should be split into two equals, before multiplying by two for each Accused, to get the correct mandatory fine. See Stephen Mboguah v Republic [2017] eKLR, at paragraph 69, per Ong'udi, J.

27. Invoking the ratio descidendi which was enunciated in Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae) (Petition 15 & 16 of 2015 (Consolidated)) [2017] KESC 2 (KLR) (14 December 2017) (Judgment), the constitutionality of the mandatory fine imposed under section

48(1)(b) of ACECA read with section 48(2)(a) of ACECA, was unsuccessfully challenged in Cephas Kamande Mwaura v Republic [2021] KEHC 6602 (KLR), per M. Ngugi, J.

Part iv: Determination of the appropriate sentence to mete out to the accused

28. In determining the appropriate sentence to mete out to the Accused, this Court has addressed its mind to Article 50 of *the Constitution*; the CPC and in particular sections 215 and 216 thereof; section 45(1)(a) of ACECA read with section 48 of ACECA; section 353 of the Penal Code; section 41(2) of ACECA read with section 48 of ACECA; the broad principles applicable to sentencing generally (afore-discussed); the specific principles which govern sentencing in anti-corruption and economic crimes; the Sentencing Policy Guidelines, 2023 (which policy is intended to promote transparency, consistency and fairness in sentencing as enunciated in Michael Kathewa Laichena & another vs. Republic (2018) eKLR); the submissions of the appropriate sentence as advanced by learned Counsel Mr. Migele representing the Accused and learned Prosecution Counsel Mr. Khatib representing the state.

29. In his oral submissions, learned Prosecution Counsel, submitted that the Accused is a first offender.

30. In his oral submissions, learned Counsel representing the Accused submitted that his client is a first offender and that his client is a family man with dependents namely a wife and three children who depend on him. Counsel therefore pleaded for a lenient sentence.

31. In particular, this Court has considered the mitigating factors prevailing in favour of the Accused which include: (i) the fact that the Accused is deemed a first-time offender; and (ii) the fact that the Accused is a family man with dependents namely a wife and three children who depend on him.

32. This Court has also considered the aggravating factors prevailing against the Accused namely: (i) the seriousness of the offences, especially under Count I; and (ii) their negative economic implication on public property.

33. Besides, this Court has addressed its mind to other factors as follows: (i) the maximum sentence for all the offences under Counts I, III and IV; (ii) the mandatory sentence in relation to Count I; and (iii) the fact that public property was obtained by the Accused fraudulently in form of salaries and allowances.

34. Now therefore, having carefully considered the purpose of sentencing in the context of the mitigating factors which now outweigh the aggravating factors; and there having been no previous criminal records against the Accused considered in the edict that first offenders are the most favourite children of the law – guided by the enunciations in the Mita case; the Muhidin case; the Hamdi case; the Hamdi case; the James case; the Nilsson case; the Wanjema case; the Khali case; the Simiyu case; the Okerosi case; and the Kinyua case discussed herein above - this Court forms the opinion that in accordance with the principles of sentencing under the said Sentencing Policy Guidelines, being a first offender, a non-custodial sentence is the most appropriate in this case. The non-custodial sentence should however tilt towards achieving the overall purpose of sentencing namely retribution; deterrence; rehabilitation; restorative justice; promotion of a sense of responsibility; community protection; and denunciation.

35. Reasons wherefore the Accused is sentenced as follows:

    a. Under Count I, the Accused is sentenced as follows:

        i. Pursuant to section 48(1)(a) of ACECA which prescribes a discretionary punishment, the Accused is sentenced to pay a fine of Kshs. 100,000, default of which he shall serve a term of imprisonment of one year; and

ii. Pursuant to section 48(1)(b) of ACECA read with section 48(2)(a) of ACECA which prescribes an additional mandatory fine of two times the amount of the benefit or loss (apart from the discretionary punishment under section 48(1)(a) of ACECA), the benefit gained by the Accused having been assessed at a sum of Kshs. 7,173,963, the Accused is sentenced to pay a fine equal to two times the amount of this benefit, being a sum of Kshs. 14,347,926, default of which he shall serve a term of imprisonment of one year.

b. Under Count III, the Accused is sentenced to pay a fine of Kshs. 100,000, default of which he shall serve a term of imprisonment of one year.

c. Under Count IV, the Accused is sentenced to pay a fine of Kshs. 100,000, default of which he shall serve a term of imprisonment of one year.

36. This Court informs the Accused person that under section 349 of the Criminal Procedure Code, a right of appeal against the conviction and/or sentence is conferred and that the right is exercisable within 14 days from date.

DELIVERED, SIGNED AND DATED IN OPEN COURT AT THE MILIMANI ANTI-CORRUPTION COURT THIS 28TH DAY OF AUGUST, 2025

....

C.N. ONDIEKI

PRINCIPAL MAGISTRATE

In the presence of:

The Accused

Advocate for the Accused: Mr. Migele

Prosecution Counsel: Mr. Khatib

Advocate Watching Brief for EACC: Ms. Makori

Court Assistant: Ms. Mutave