Kiplagat v Republic (Criminal Revision E145 of 2024 & Miscellaneous Criminal Application E666 of 2024 & E001 of 2025 (Consolidated)) [2025] KEHC 14896 (KLR) (23 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14896 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ITEN

CRIMINAL REVISION E145 OF 2024 & MISCELLANEOUS CRIMINAL APPLICATION E666 OF 2024 & E001 OF 2025 (CONSOLIDATED)

JRA WANANDA, J

OCTOBER 23, 2025

BETWEEN

EVANS KIMUTAI KIPLAGAT ..... APPLICANT

AND

REPUBLIC ..... RESPONDENT

RULING

1. The background to this matter is that the Applicant was charged with the offence of assaulting a police officer contrary to Section 103(a) of the National Police Service Act. He initially pleaded guilty but changed his plea to one of guilty, and was convicted on the basis of the same. By the Judgement delivered on 25/07/2024, he was sentenced to serve 5 years' imprisonment.

2. The Applicant then filed the present Application, namely the Notice of Motion dated 14/10/2024. He seeks orders as follows:

    a. That the Petitioner is approaching this Hon. Court for a sentence review under Section 387 as read with section 364 of CPC and in reliance to Article 50 (2)(q) for period spent in pre-trial custody.

    b. That the Petitioner is seeking for orders for consideration of the period of 1 month that was spent in pre-trial custody to be part of his 5 years sentence pursuant to Section 333 (2) of the CPC.

    c. That the Petitioner is seeking for orders for a review of his sentence to a default sentence with an option of a fine pursuant to section 25 of the penal code.

d. That he is seeking for orders for a resentence on the basis that his sentence was wrong in principle.

e. That the Petitioner is seeking for orders for a resentence on the reason that the sentence is very punitive, harsh and excessive in the circumstances of the case.

f. That the Petitioner is praying to be present during the determination of this petition.

3. The Applicant then filed undated Submissions on 4/06/2025, in which he urged that the Section of law under which he was convicted gives the option of a fine, and that he was remorseful having trained on biblical teachings and religious courses and received certificates. He also submitted that, among others, he has learnt to control anger and live peacefully in society, and that he wished to reunite with his family.

4. Prosecution Counsel, Ms. Mwangi, on her part, despite giving an undertaking to file Submissions on behalf of the Respondent does not seem to have filed any. I say so because I have not come across any.

Determination

5. The issue for determination is "whether the Court should review the sentence imposed by the trial Court."

6. The jurisdiction of the High Court in respect to the powers of Revision is supervisory and is provided under the Constitution in Article 165 (6) and (7), as read with Section 362 and 364 of the Criminal Procedure Code.

7. Regarding sentence, as was restated by the Court of Appeal in Bernard Kimani Gacheru v Republic [2002] eKLR, it is a matter that rests at the discretion of the trial Court, and a higher Court will therefore not easily interfere with the sentence unless it is manifestly excessive in the circumstances of the case, or the trial Court overlooked some material factor, or took into account the wrong material, or acted on the wrong principle:

8. In this case, the offence that the Applicant was charged with and convicted of, was assaulting a police officer contrary to Section 103(a) of the National Police Service Act. That provision, read with sub-Section (d) provides as follows:

> " Any person who—
>
> (a) assaults, resists or wilfully obstructs a police officer in the due execution of the police officer's duties;
>
> (b) .....
>
> (c) .....
>
> (d) intentionally or recklessly, destroys police property, commits an offence and shall be liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding ten years, or to both.

9. In view thereof, it is clear that the sentence of 5 years imprisonment without the option of a fine imposed by the trial Court was lawful. Was it however perhaps too harsh and manifestly excessive?

10. The Supreme Court, in Francis Karioko Muruatetu & Another v Republic [2017] eKLR), guided that, in re-sentencing, the following mitigating factors are applicable; (a) age of the offender; (b) being

a first offender; (c) whether the offender pleaded guilty; (d) character and record of the offender; (e) commission of the offence in response to gender-based violence; (f) remorsefulness of the offender; (g) possibility of reform and social re-adaptation of the offender; and (h) any other factor that the Court considers relevant.

11. I also cite Majanja J, in the case of Michael Kathewa Laichena & another v Republic [2018] eKLR, in which, quoting the Muruatetu case (supra), he stated as follows:

> "The Sentencing Policy Guidelines, 2016 ("the Guidelines") published by the Kenya Judiciary provide a four tier methodology for determination of a custodial sentence. The starting point is establishing the custodial sentence under the applicable statute. Second, consider the mitigating circumstances or circumstances that would lessen the term of the custodial sentence. Third, aggravating circumstances that will go to increase the sentence. Fourth, weigh both aggravating and mitigating circumstances. ....."

12. Similarly, in the case of Daniel Kipkosgei Letting Vs. Republic [2021] eKLR, the Court of Appeal pronounced itself as follows;

> "..... we observe that the purpose and objectives of sentencing as stated in the Judiciary Sentencing policy should be commensurate and proportionate to the crime committed and the manner in which it was committed. The sentencing should be one that meets the end of justice and ensures that the principles of proportionality, deterrence and rehabilitation are adhered to. ....."

13. Applying the above principles to the facts and circumstances of this case, it is clear that the offence committed by the Appellant crossed the accepted societal norms. Assaulting and injuring a police office in the course of his duty, apart from being one of the most despicable acts, and an affront to the law, also demonstrates the Appellant's blatant lack of respect to lawful authority. This cannot be allowed or tolerated, particularly by a Court of law. Under these circumstances, one may understand what prompted the trial Magistrate to mete out the prison term without the option of a fine.

14. Nonetheless, I find the existence of some mitigating factors tilting in favour of the Appellant. For instance, he pleaded guilty, and thus saved the Court precious time, and also saved the Prosecution substantial resources. He was also indicated to be a 1st offender. He is also a young man of about 24-25 years who therefore still has an entire life ahead of him. I find the above to be factors which the trial Magistrate may have overlooked and thus failed to take into account. Although the offence he was convicted of merits a severe sentence, under these circumstances, I find the sentence imposed excessive.

Final Order

15. In the circumstances, I make the following Orders:

    i. The sentence of 5 years imprisonment imposed in Iten Senior Principal Magistrate's Court Case No. E666 of 2024 against the Applicant, is hereby set aside, and substituted with the sentence of 2 years imprisonment.

    ii. The prison sentence shall, in accordance with the provisions of Section 333(2) of the Criminal Procedure Code, be computed to run as from the date of arrest indicated in the charge sheet, namely, 28/06/2024.

iii. Consequently, Iten High Court Miscellaneous Criminal Application No. E666 of 2024, and Iten High Court Miscellaneous Criminal Application No. E001 of 2025, consolidated with this instant Application, are also now marked as closed files.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 23RD DAY OF OCTOBER 2025

.....

WANANDA JOHN R. ANURO

JUDGE

Delivered in the presence of:

The Applicant (present virtually from Ngeria Prison)

Ms. Mwangi for the State

Court Assistant: Brian Kimathi