Wasike v Republic (Miscellaneous Criminal Application E099 of 2025)
[2025] KEHC 15725 (KLR) (24 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15725 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT BUNGOMA

MISCELLANEOUS CRIMINAL APPLICATION E099 OF 2025

MS SHARIFF, J

OCTOBER 24, 2025

BETWEEN

CALEB WASIKE ..... APPLICANT

AND

REPUBLIC ..... RESPONDENT

RULING

1. The Applicant Caleb Wasike was charged with the offences of threatening to kill contrary to Section 223(1) of the Penal Code and resisting arrest by a police officer contrary to Section 103 (a) of the *National Police Service Act* in Sirisia CMCR Case No. E.201 of 2025.

2. At the conclusion of the trial, the Applicant was convicted on both counts and was sentenced to serve 1 year custodial term on each count. He has now moved this court craving for review of his sentence. He craves that the same be ordered to run concurrently.

3. It is trite law that sentencing is an exercise of discretion of the trial court. In the case of Ogolla S/o Owuor -vs- R (1954) EACA 20 the Court of Appeal rendered itself as follows:

> " The court does not alter a sentence unless the trial judge has acted upon wrong principles or overlooked some material factors. To this we would add a third criterion namely; " that the sentence is manifestly excessive in view of the circumstances of the case (R -vs- Shershowsky (112) CCA 28 TLR 263."

4. In the case of Bernard Kimani Gacheru -vs- R (2002) eKLR the Court of Appeal held as follows:

> " 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, that sentence is manifestly excessive in the circumstances of the case, or that

the trial court overlooked some material fact or took into account some wrong material, or acted on a wrong principle. Even if the Appellate court feels that the sentence is heavy and that the Appellate court might itself not have past 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 stated is shown to exist."

5. This court is bound by the aforecited authorities of the Court of Appeal.

6. Section 103 (a) of the *National Police Service Act* Chapter 84 Laws of Kenya provides as follows:

> " Any person who assaults, resists or willfully obstructs a police officer in the due execution of the police officer's duties; 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 10 years or both".

7. On the otherhand Section 223 of the Penal Code prescribes that:

> " (i) (i) Any person without lawful excuse utters, or directly or indirectly causes any person to receive a threat whether in writing or not, to kill any person is guilty of a felony and is liable to imprisonment for ten years."

8. It is apparent that in the case of the Applicant herein, the trial court deported from the prescribed sentence under Section 223 of the Penal Code and as regards Section 103 (a) of the National Police Act, the court was extremely lenient. Given that this is not an appeal where the state would have filed a notice of enhancement of judgment, I will dismiss this application due to want of merit.

9. This file is hereby marked as closed.

DELIVERED, SIGNED, AND DATED AT BUNGOMA THIS 24TH DAY OF OCTOBER, 2025.

MWANAISHA S. SHARIFF

JUDGE.