Chelagat & another v Republic (Criminal Revision E280 of 2025)
[2025] KEHC 16651 (KLR) (14 November 2025) (Ruling)

Neutral citation: [2025] KEHC 16651 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CRIMINAL REVISION E280 OF 2025

RN NYAKUNDI, J

NOVEMBER 14, 2025

BETWEEN

RUTH CHELAGAT ..... 1ST APPLICANT

EASTHER NDIRANGU ..... 2ND APPLICANT

AND

REPUBLIC ..... RESPONDENT

(Coram: Before Justice R. Nyakundi M/s Sidi Kirenge for the State)

RULING

1. The Applicants were charged of stealing by servant contrary to Section 281 of the Penal Code. The brief facts are on the 7th day of July 2025, at around 0700hrs at Turbo township, Tapsagoi location, Turbo Sub County within Uasin Gishu County by virtue of being a servant of Everlyne Indusa jointly stole four keg containers with liquor worth Kshs. 30,000/= the property of Everlyne Indusa. They pleaded guilty to the offence convicted and sentenced to a fine of Kshs. 5,000/= in default 3 months imprisonment.

Decision

2. This application has been considered under Art 50(2)(p)(q), 6(a)(b) as read with Section 362 & 364 of the Criminal Procedure Code.

3. The guiding principles on review of sentence post-conviction is well articulated by the Court of Appeal in Bernard Gacheru v 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."

4. This was also the position taken by the Court in S vs. Malgas 2001 (1) SACR 469 (SCA) held that:

> " A Court exercising appellate jurisdiction cannot, in the absence of material misdirection by the trial Court, approach the question of sentence as if it were the trial Court and then substitute the sentence arrived at by it simply because it prefers it. To do so would be to usurp the sentencing discretion of the trial Court...However, even in the absence of material misdirection, an appellate Court may yet be justified in interfering with the sentence imposed by the trial Court. It may do so when the disparity between the sentence of the trial Court and the sentence which the appellate Court would have imposed had it been the trial Court is so marked that it can properly be described as "shocking", "startling" or "disturbingly inappropriate"

5. The doctrine of proportionality in sentencing is one of the fundamental aspect which actually must define the trial Courts discretion in imposing a fair and appropriate sentence. The Court in Tarry v Pryce (1987) 24 A Crim R 394, 402 had this to say:

> Although the discretionary aspect of sentencing is of great importance, there is to my mind no doubt that there is scope for a more scientific approach. A lack of consistency between sentencers dealing with run-of-the-mill cases cannot be supported by reliance on the discretionary power to sentence. The need for consistency in the punishment in like cases of like persons overrides the right of the sentencers to impose his idiosyncratic view.

6. From the foregoing, the factors that are relevant to the decision making of the issues raised in the application must be assessed within the principles which have been discussed elsewhere in this ruling. In matters of this nature, seriousness of a crime has two dimensions; harm and culpability. Harm refers to the injury done or risked by the act; culpability to the factors of intent, motive and circumstances that determine the extent to which the offender should be held accountable for the act.

7. In every case, however, the nature of the circumstances must convince a reasonable mind that a lesser sentence is a proper sentence and that it is justified when regard is had to: the aggravating and mitigating features attendant upon the commission of what is ready classified by the lawgiver as among the most serious of offence and the interests of society weighed against the interests of the offence.

8. It is for this reasons at the outset of the enquiry in terms of Section 362 & 364 of the CPC. Custodial sentence is reviewed and substituted of the balance of the period imposed to be served within the community based rehabilitation. Through the leadership of the Chief and the National Government Administrative Organization to provide appropriate counselling to the applicant to prevent re-offending. This order shall be served upon the Area Chief to oversight rehabilitation of the offender on the remainder of the period imposed by the Trial Court. Therefore, the applicants shall be release from prison custody forthwith with a condition that they should be law abiding citizens. The victim of the offence shall be at the liberty to pursue the civil process of the property intermeddled by the applicants.

GIVEN UNDER MY HAND AND SEAL OF THIS COURT THIS 14 TH DAY OF NOVEMBER 2025

…… ..

R. NYAKUNDI

JUDGE