Mimbone v Republic (Criminal Revision E258 of 2025)
[2025] KEHC 16396 (KLR) (14 November 2025) (Ruling)

Neutral citation: [2025] KEHC 16396 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CRIMINAL REVISION E258 OF 2025

RN NYAKUNDI, J

NOVEMBER 14, 2025

BEFORE JUSTICE R. NYAKUNDI

M/S SIDI KIRENGE FOR THE STATE

BETWEEN

PHYLLIS MIMBONE ..... APPLICANT

AND

REPUBLIC ..... RESPONDENT

RULING

1. The Applicant was charged of being in possession of alcoholic drinks contrary to Section 27(1)(b) as read with Section 27(4) of the *Alcoholic Drinks Control Act* No. 4 of 2010. The brief facts are on the 10th day of July 2025, at around 1915hrs at Maili Nne area in Turbo Sub County within Uasin Gishu County was found in possession of alcoholic drinks to wit 10 litres of chang'aa having not been prepared in accordance with the *Alcoholic Drinks Control Act* No. 4 of 2010. She pleaded guilty to the offence convicted and sentenced 6 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 v 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 short the Applicant has not met the criteria to review the sentence imposed by the trial Court for the same has been fully served. Hence the subject matter is lost. As a consequence of which the application is dismissed under Section 382 the *Criminal Procedure Code* and the case file shall be marked as closed.

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

....

R. NYAKUNDI

JUDGE