Nasimiyu v Republic (Criminal Revision E269 of 2025)
[2025] KEHC 16638 (KLR) (14 November 2025) (Ruling)

Neutral citation: [2025] KEHC 16638 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CRIMINAL REVISION E269 OF 2025

RN NYAKUNDI, J

NOVEMBER 14, 2025

BETWEEN

SCOLASTICA NASIMIYU ..... APPLICANT

AND

REPUBLIC ..... RESPONDENT

RULING

1. The Applicant was charged of being in possession of alcoholic drinks contrary to Section 8(b) as read with Section 64 of Uasin Gishu County 2014 Act. The brief facts are on the 12th day of October 2025, at Chukura village in Soy Sub County within Uasin Gishu County was found in possession of alcoholic drinks to wit 20 litres of chang'aa. She pleaded guilty to the offence convicted and sentenced to a fine of Kshs. 10,000/= 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. I have carefully considered the circumstances of this offence and I find this statement relevant. Arguably, proportionality is at its most persuasive when stated in its simplest form: that the severity of the punishment should reflect the seriousness of the offence. The law is justified in meeting out greater punishment on a murderer than a petty thief, not necessarily because the former is more likely to reoffend or poses a greater threat to public safety, but because of the seriousness of his offence. It is for this reason I take the approach that the period already served by the applicant suffices has appropriate sentence in custody and the balance can be served within the homebased rehabilitation. The discount should be sufficient for the applicant to enjoy an early release from custody to the community where she has enjoyed cordial relationships before the arrest and indictment. It is so ordered.

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

.....

R. NYAKUNDI

JUDGE