



**Njoki v Republic (Criminal Appeal E295 of 2024)
[2025] KEHC 16329 (KLR) (11 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16329 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL APPEAL E295 OF 2024
RN NYAKUNDI, J
NOVEMBER 11, 2025**

BETWEEN

JOYCE NJOKI APPELLANT

AND

REPUBLIC RESPONDENT

*(Under Section 362, 364 of the Criminal Procedure Code and Article 50(2)
of [the Constitution of Kenya, 2010](#))*

RULING

1. Before this Court is a notice of motion dated 14th October 2025 where the applicant seeks for the following orders:
 - (a) This application be certified as urgent.
 - (b) That this honourable Court do review, vacate and or vary the sentence and conviction of the applicant as passed by the trial Court.
 - (c) That this honourable Court do issue an order for social inquiry report regarding the complainant, the convict and the subject minor who has been born in prison due to these proceedings.
 - (d) That if need be, an order for the assessment of the injuries sustained by the complainant be made with a view to ascertain whether it was indeed permanent or just harm on the body.
 - (e) The conviction and sentence of 10 years imprisonment for the offence of grievous harm in Eldoret CMC No. E20 of 2023 delivered on 2nd January 2023 be and is hereby quashed and the appellant released forthwith.



- (f) That the complainant herein has written a letter to the Court which he prays for this Honourable Court to consider in its Ruling
2. Which application is anchored and based on the following grounds and others to be adduced at the hearing of this application as follows:
- (a) That the Applicant pleaded guilty to the offence of causing grievous harm to her husband.
 - (b) That at the time of the plea, the applicant herein pleaded guilty to the offence without being informed on the repercussion of pleading guilty.
 - (c) That the learned Magistrate failed to note that appellant was not represented by an advocate hence did not understand the charge at the 1st instance.
 - (d) That as a result of the plea, the learned Magistrate sentenced the applicant to 10 years' imprisonment for the subject offence.
 - (e) That the sentence was punitive, excessive and oppressive under the circumstances based in mind that the complainant is a husband to the applicant.
 - (f) That the subject injury was never a grievous harm as was shown since no permanent injury or dent as been occasioned to complainant and for avoidance of doubt, the complainant confirmed that he exaggerated the injuries to teach his wife a lesson.
 - (g) That since the injuries are exaggerations by the complainant, it is now apparent that the conviction and the sentence thereto be revised and further orders made.
 - (h) That the Applicant has equally given birth while in prison since the offence happened while she was due to give birth, your honour, it is not in the interest of the minor to stay in prison for 10 years, the period upon which the mother is to serve while the complainant is the father to the child. Your Honour we invite the court to breathe life into the law and the right of the subject minor who is currently in prison.
3. The application is further supported by the affidavit sworn by Joyce Njoki who deponed as follows:
- (a) That I am a female adult of sound mind and disposition hence competent to make and do hereby make and swear this affidavit.
 - (b) That I was convicted for 10 years imprisonment on my own plea of guilty Eldoret CMCR No. E020 of 2024 delivered on 2nd January 2023 for the offence of grievous harm against my husband.
 - (c) That we have since reconciled with my husband and I am reformed and remorseful for what I did to him.
 - (d) That I pleaded guilty to the offence due to panic and fear since I was informed of anything, and I was panicking for my husband after he hit me while I was pregnant with his baby.
 - (e) That my husband has also written a letter and sworn an affidavit to court in which he states that he exaggerated the treatment notes and in particular, the P3 form in which he indicated that he suffered permanent injuries, which was never the case.
 - (f) That I gave birth to my daughter while in prison she has been staying, with me for the last 2 years in prison, which is not to the best interest of the child, yet her father is the complainant in the case that he admits to exaggerating treatment documents.



- (g) That my daughter is innocent and it will be unfair for her to continue serving the remainder of the sentence with her while in prison yet she was never involved in the altercation between the father and her mother.
- (h) That since it is the confession of the complainant himself that he was misled in giving the information to both the police and the doctors.
- (i) That the complainant has healed and true to his word, no permanent injuries has been occasioned since he is fully recovered without any deformity.
- (j) That it is just and fair that I be released from prison and unite with my family to enable us move on with our lives together as one family

SUBPARA(k)

That I am advised by the Advocates for the Applicant, which advise I verily believe to be true that the continued detention of the applicant by the respondent is a violation of the applicant's constitutional rights.

4. The Complainant also swore an affidavit in support with the following averments:
- (a) That I am a male adult of sound mind and disposition hence competent to make and do hereby make and swear this affidavit.
 - (b) That the Appellant herein is my wife.
 - (c) That the circumstances leading my wife to be imprisonment was that I provoked her by breaking her phone and she got furious and poured hot water on me.
 - (d) Furthermore I started cheating, on my wife while she was pregnant and when she got hold of my phone while I was bathing, anger cropped into me and I slapped her and broke her phone, actions that led to my problems thereafter.
 - (e) That out of anger, I was misled to lie that I had severe and permanent injuries since so that my wife could be convicted to allow me settle with my other girlfriend.
 - (f) That while giving the Police Officers the statements, I exaggerated the issues herein solely to enable my wife to be arrested, which I now regret and wish to abandon the same.
 - (g) That I can confirm beyond any doubt that the injuries were not permanent in nature since I had healed and completely recovered from the same.
 - (h) That I was unconscious and hospitalized and when I got discharged I found my wife had already been imprisoned for 10 years after she pleaded guilty for the offence due to panic and fear.
 - (i) That I have had numerous discussions with my wife and she has been remorseful and has been rehabilitated hence I have forgiven her.
 - (j) That my daughter was also born while my wife was in prison hence she has spent the two years in prison which is unfair to her since she needs to grow like a normal child where she can enjoy the freedoms enshrined under *the Constitution* of Kenya like the rest of the children with tender age.
 - (k) That I pray that the orders sought herein be granted so that I may be united with my family and live together once more.



Decision

5. The applicant has approached this court pursuant to Section 362 as read with 364 of the Criminal Procedure Code and further within the scope of Article 50 (2) (p) (q) and 6(a) & (b) of *the Constitution*. The basis of it is traceable to the affidavit sworn by the Applicant and one Daniel Rutto the Complainant in the primary case file. The genesis of the indictment arises out of anger from the spouse to the Applicant. This is clearly captured in the two affidavits relied upon by this Court to review the sentence.
6. The law is now settled on the guiding principles in the case of Benard Kimani Gacheru vs Republic [2002] EKLK as herein stated by the Court of Appeal:

“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 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 stated is shown to exist.”

7. In the Irish Judicial Studies Journal [2019] Vol 3 the Learned Author made the following observations:

‘Trying a case is as easy as falling off a log. The difficulty comes in knowing what to do with an accused once they have been found guilty’ One of the most difficult and fundamental problems in sentencing is how the judge ought to approach the sentencing task in terms of a methodology or system of decision-making. Sentencing judges in many common law jurisdictions have traditionally enjoyed a wide sentencing discretion. In recent years, however, attempts have been made by various bodies -including appellate courts, the legislatures, and sentencing commissions or councils-to guide judges’ sentencing discretion. This article explores four distinct methods, or systems, of judicial decision-making employed in sentencing: the so-called ‘instinctive synthesis’ approach; the ‘tiered’ or ‘staged’ approach; the use of ‘principled discretion’ through the use of appellate sentencing guidelines; and finally the ‘algorithmic’ approach, involving the use of presumptively binding guidelines set by a sentencing council. Each of these methodologies is associated with a particular jurisdiction or jurisdictions. Each methodology structures the sentencing judge’s decision-making to a greater or lesser degree, with important implications for the attainment of justice in the individual case.”

8. The Sentencing Policy Guideline captures the letter and spirit of the sentencing framework in Kenya. Its integrated approach has the following components:
 - a. Retribution: to punish the offender for his/her criminal conduct in a just manner.
 - b. Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
 - c. Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law-abiding person.



- d. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.
 - e. Community protection: to protect the community by incapacitating the offender.
 - f. Denunciation: to communicate the community's condemnation of the criminal conduct.
 - g. Reconciliation: To mend the relationship between the offender, the victim and the community.
 - h. Reintegration: To facilitate the re-entry of the offender into the society.
9. 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 already classified by the lawgiver as among the most serious of offences, and the interests of society weighed against the interests of the offence.
 10. It has become established feature of the Kenyan sentencing practice to consider the age of the offender, the seriousness of the offence, whether lethal or dangerous weapon was used to inflict harm, the prospect of rehabilitation of the offender and also the level of remorse displayed by an accused person. Genuine contrition or remorse is generally regarded as a mitigating factor whilst the absence thereof is considered to be an aggravating factor. Our Courts link the presence of remorse with the prospect of the rehabilitation of the offender.
 11. Sentencing of offenders is one of the most important components of the trial courts in our criminal justice system, and yet it remains to the most difficult Judicial function given the fact that it is underpinned under the tyranny of judicial discretion. Therefore, if performed perfunctorily it may frustrate the entire objectives of a country's criminal justice system and even go further to plead more acts of wrongdoing or criminality instead of preventing any such unlawful acts or omission in violation of the law. There is therefore a need for fairness, well putting into effect the principles and objectives of sentencing as highlighted elsewhere in this ruling.
 12. In determining an appropriate sentence, a Court should not lose sight on the circumstances under which an offence was committed including the roles played by the offender and the victim. The impact of the offence on that individual victim and the community as a whole. It is also worthy to evaluate whether the Victim Offender Mediation within the provisions of Article 159(2) (c) of *the Constitution* will be a better forum with a better outcome of restorative justice. It is interesting that most judgments on sentencing give prominence to deterrence objective notwithstanding the application of the other aims of sentencing. The Court should always remember the fundamental principle that a sentence must be proportionate not only to the gravity of the offence, but also to the degree of participation of responsibility of the offender. For this reason, it is trite that sentencing is a highly individualized process that takes into account the offence as well as the offender.
 13. In the instant case, there are compelling and exceptional circumstances which calls upon this Court to review the sentence imposed by the trial Court. The aforesaid compelling circumstances fall within Article 53 (2) on the best interest of the child being of paramount importance in every matter concerning the child. This happens to be a unique case in which the Applicant was expectant as at the time when she had a conflict of some sort with her spouse Daniel Rutto. In the evidence tendered before the trial Court the victim allegedly suffered physical harm as a result of the fight. In anger and emotional stress, he reported the matter to the Police Station which resulted in his wife (the Applicant) being arrested and arraigned before Court with the offence of causing grievous harm against the complainant. The Applicant pleaded guilty to the offence without knowing the consequences of



the plea in so far as the sanctions of the law are concerned. The Learned Trial Magistrate in her wisdom exercised discretion by imposing a ten-year custodial sentence. As fate would have it, the blessed womb of the mother gave birth while in prison custody an angelic baby girl with soft halos to emphasize her innocence and beauty. The only sad story she was not aware of the environment in which she was birthed and the consequences of it that she will be serving a ten-year custodial sentence for an offence she knows nothing about. In fact, from the record, her parents fought and the outcome of it became a police case when she was still in her mother's womb waiting to explode and discover her new world at an opportune time when the clock of creation takes effect in the earthly world as stated in Article 26 of *the Constitution*. The Children's Act of Kenya prioritizes a child's survival, protection and development and that at all times the best interest must reign supreme in the judicial decision-making process of our Courts. If this sentence is allowed to stand given its unique circumstances and background the offence was committed between two young adults intentional to start a marriage life together and bring forth a generation will impact and threaten the infringement of the provisions of Article 25(a) of *the Constitution* which reads as follows:

“Despite any other provision in this Constitution, the following rights and fundamental freedoms shall not be limited-Freedom from torture and cruel, inhuman or degrading treatment or punishment.”

14. In the sentencing scheme adopted by the Learned Trial Magistrate the decision deprived the Complainant who happened to be the spouse to the Applicant to pursue a reconciliation or mediation as provided for under Article 159 (2) (c) of *the Constitution*. My appreciation of Article 2 (5) & (6) of *the Constitution* provides the anchorage of International Law in the decision-making process. More so, on protection and guarantees in the human rights architecture which in our Constitution is enshrined in our Bill of Rights, (See the Convention on the Rights of the Child, African Charter on the Rights and Welfare of the Child) etc. In this respect the child was in prison with her mother and being subjected to severed overcrowding, insufficient food supply, stretched physical facilities which are likely to endanger the right to life of the innocent child. This is a case where the child is a victim of circumstances and conflict triggered by her own very biological parents as a consequence of which she suffered collateral damage as a victim of imprisonment as a consequence of wrongs committed by her biological parents. This unfortunate incident subject matter of the prosecution can best be described as a domestic violence within the family circle which had not escalated to a deserving ten-year custodial sentence of an expectant mother. There was failure on the trial Court to treat custodial sentencing of primary caregivers as the last option and more significantly where children or a child are in custody for crimes committed by her mother does disrupt parental care and guidance which goes against the natural law theory of equal rights and treatment in Article 27 of *the Constitution*. This child in question was made to surrender inalienable rights such as rights to liberty, right to life, right to security, right to dignity and privacy riding on the wrongs committed by the mother.
15. Should this Court be merciful to the Applicant? The meaning of mercy in the judicial context is a rightful part in the process of judgment and sentencing. In the strongest sense of the word, it is a judicial prerogative of a Judge of Magistrate of taking into account under appropriate circumstances compassion and mercy towards an accused person once convicted as a deviation from strict retribution. Although the concept of mercy is more often than not mentioned in the sentencing decision making by Judges and Magistrates alike, one has to look at the discretion more broadly, and there is always a perpetual tension between the judicial decision making to present the verdict's result as a correct and just legal decision while it emerges that there are various hybrid factors to be taken into account as tools of what is considered a fair and appropriate sentence. The conception of mercy in the parameters of sentencing does not necessarily connote leniency but is a process of a sentencing Judge to select an



appropriate sentence from within a range of authorized punishments from which the frame of mind of a Judge is likely to be induced by the imaginative effort of placing himself or herself at the locus in quo of the crime in an effort to see both the impact of the possible sentence based on the nature of the criminal conduct from the accused's perspective balancing it with the competing interest of the victim of the offence.

16. It is from this stand point my careful analysis of the record before the trial Court multiple scenarios in pursuit of justice arise from the affidavits of the Applicant and the Complainant both who happen to be cohabiting together as husband and wife during the commission of the offence. In light of these and the strength of the recommendations made by the Probation Officer the residual discretion I exercise is that of reviewing the custodial sentence from the acceptable margin of proportionality based on the rare and exceptional circumstances of the case at bar. There is therefore a downward departure to allow weight to be given to factors which are ordinarily not regarded as mitigating considerations to give effect to the higher scale of human rights guarantees in our Bill of Rights and have it substituted with a non-custodial sentence. This prerogative is based on the assumption that there is a complementary but independent function to mercy in the framework of adjudication of sentences sanctions to be imposed by a trial Court.
17. For those reasons the Applicant shall be removed from Prison and placed under the supervisory jurisdiction of the Probation Officer for the next three (3) years and during pendency of serving this sentence there should be intense professional counselling of both the victim of the offence and his own spouse who happen to be the Applicant in the notice of motion at hand. With this judgment, it is time for the biblical maxim on carrying one's bed applies to the Applicant for her walk out of the multi-gated environment to freedom and serve her sentence in the community based set up. It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 11TH DAY OF NOVEMBER 2025.

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R. NYAKUNDI
JUDGE

