



**Wangeshi v Republic (Criminal Revision E206 of 2025)  
[2025] KEHC 15921 (KLR) (3 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 15921 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E206 OF 2025  
RN NYAKUNDI, J  
NOVEMBER 3, 2025**

**BETWEEN**

**PETER MATHENGE WANGESHI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Before this Court is an application dated 25<sup>th</sup> day of August 2025 seeking the following orders:
  - a. That this Honourable Court be pleased to call for and examine the record of the lower Court in Eldoret Criminal Case No. E995 of 2025 for purposes of satisfying itself as to the correctness, legality, and propriety of the sentence imposed upon the Applicant.
  - b. That this Honourable Court be pleased to revise, review, and/or set aside the custodial sentence of one (1) year imprisonment imposed on the Applicant and substitute the same with a non-custodial sentence. probation, or such other order this Honourable Court deems fit and just.
  - c. Spent.
2. The application is grounded on the following grounds:
  - a. That the Applicant was charged, convicted, and sentenced to one (1) year imprisonment for the offence of malicious damage to property contrary to Section 339 of the Penal Code.
  - b. That the Applicant is a first offender, remorseful, repentant, and regretful of his actions.
  - c. That the Applicant has reconciled with his mother, who was the complainant and they have resolved the dispute amicably
  - d. That the Applicant has deeply reflected on his conduct and undertakes never to engage in criminal behavior again.



- e. That the incident was occasioned by peer influence and bad company, circumstances which the Applicant has since renounced.
  - f. That the Applicant has already served a portion of the sentence, which is sufficient punishment for the offence.
  - g. That this Honorable Court has jurisdiction under Section 362 and 364 of the Criminal Procedure Code and Article 165(6) & (7) of the Constitution to revise the sentence.
3. It is annexed by an affidavit sworn by Peter Mathenge Wangeshi which states as follows: -
- a. That I am the Applicant herein hence competent to swear this affidavit.
  - b. That I was the accused in Eldoret Criminal Case No. E995 of 2025, charged with malicious damage to property contrary to Section 339 of the Penal Code.
  - c. That upon conviction, I was sentenced to serve one (1) year imprisonment. (Annexed hereto and marked PMW-I is a copy of the sentence proceedings).
  - d. That I was convicted as a first offender and I am deeply remorseful, repentant, and regretful of my actions.
  - e. That the complainant in the matter, who is my mother, has forgiven me, and we have reconciled, having agreed never to engage in conflict again.
  - f. That my conduct was influenced by peer pressure and bad company. a mistake I have since renounced after deep reflection while in custody.
  - g. That I undertake never to participate in any form of criminal behavior in the future.
  - h. That the one-year custodial sentence is manifestly harsh in the circumstances, and I pray that this honourable Court be pleased to revise and substitute the sentence with probation or any other lawful order that it deems just.
  - i. That I make this application in good faith and in the interest of justice

### **Decision**

4. The applicable law falls within the provisions of Art 50(2)(p)(q) of the constitution as read with Section 362 of the Criminal Procedure Code. The Applicant seeks review of sentence from custodial to non-custodial. The principles on sentencing the review or an appeal are now well settled by the Superior Courts for instance the Court of Appeal in Bernard Gacheru vs 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.”



5. 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.”

6. The Sentencing Policy Guideline captures the letter and 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.

7. These principles and objectives of sentencing in the policy are also underpinned under the doctrine of proportionality. The necessities of it that punishment must fit the crime. Before this Court the nature and circumstance if the offence had been well laid down by the Probation Officer’s Report dated 15<sup>th</sup> October 2025. In his inquiry the Probation Officer interrogated various aspects to input into the report which included: Current Home and Personal Circumstances Personal history/circumstances Prison Rehabilitation Offenders’ Attitude and Impact of Imprisonment

8. In the assessment of the Probation Officer the inmate qualifies for a non-custodial sentence for the remainder of his term. If mercy requires a tempering of justice then there is a sense in which this rarely discussed factor can be invoked to review the custodial sentence imposed by the trial Court to be substituted with that of probation sentence with a condition precedence that victim-offender mediation be initiated to achieve full reintegration with the family and community of the convict. The



Probation Officer shall provide the necessary mechanism under which counselling can take place as a model of rehabilitation and transformation post-conviction release. The result of it all is to have the convict release from custody forthwith to join his family and the community at large. It so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 3RD DAY OF NOVEMBER 2025.**

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**R. NYAKUNDI**

**JUDGE**

