



REPUBLIC OF KENYA



KENYA LAW
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**Ikura v Republic (Criminal Revision E069 of 2025)
[2025] KEHC 17493 (KLR) (26 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17493 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL REVISION E069 OF 2025
S MBUNGI, J
NOVEMBER 26, 2025**

BETWEEN

WILFRED IKURA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant asks this Court to review and reduce the custodial sentence imposed on him on 16th June 2025 after conviction on three counts relating to offences committed within a protected area:
 - a. Entering a protected area
 - b. Logging in a protected area
 - c. Burning charcoal in a protected area.
2. He prays that the sentence be reviewed, converted to community service or a fine and that any period spent on remand prior to sentence be taken into account as part of the sentence served. The application is supported by an affidavit and a sentencing review letter.
3. On 16 June 2025 the Principal Magistrate's Court at Butali convicted the applicant on three counts and sentenced him as follows:
 - a. Count 1 - fine KShs. 5,000 or one year imprisonment;
 - b. Count 2 - three years imprisonment;
 - c. Count 3 - two years imprisonment;
4. The sentences were ordered to run concurrently. The applicant was committed to Shikusa Farm Prison to serve the sentence.



5. The applicant filed the present notice of motion dated 24 June 2025 seeking review of the sentence and alternative non-custodial disposal.

6. In the case of *Chege v Republic Criminal Revision E264 of 2023 KEHC 14294* it was held that:

“the High Court has the mandate under Article 165 (3) of *the Constitution* to hear and determine matters on enforcement of rights and fundamental freedoms enshrined in *the constitution* ,A further leapfrog development; under article 50(2)(p) of *the Constitution*:50(2)Every accused person has the right to a fair trial, which includes the right(p)to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing.”

Issues for determination

7. Whether the application for sentence review discloses a proper basis for interference with the sentence already imposed by the subordinate court;

- a. Whether the applicant is entitled to credit for the period spent on remand before sentence; and
- b. Whether the applicant has established sufficient grounds including medical evidence, proof of being sole breadwinner, or other mitigation to justify substituting the custodial sentence with community service or a fine.

8. Article 165(6) of *the constitution* of Kenya 2010 dictates that the High Court has supervisory and review jurisdiction over proceedings in subordinate courts. This empowers the High Court to call for and examine the record of subordinate courts and, where appropriate, to exercise revisionary powers or resentence within the law. The Court may pass any sentence authorized by law when exercising such powers. This was held in the case of *Kennedy Mwaura Kibebe and 3 others v Annie Wanjiku Kibeh 2021KEHC52* where it was held that:

“under Article 165(6) of *the Constitution* it is stated as follows....(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.”

9. Section 333 (2) of the Criminal Procedure Code require courts to specify and, where appropriate, allow credit for time spent on remand prior to sentence. Failure to deal with remand credit is an error which, in many instances, will occasion interference on review or appeal. Section 333(2) of the Criminal Procedure Code provides that in sentencing, where an accused person was in remand custody the period spent in custody should be taken into account. It reads:

“Subject to the provisions of section 38 of the Penal Code (Cap. 63) every sentence shall be deemed to commence from, and to conclude the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code. Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.”

10. The offences in issue, prohibitions on felling, cutting, burning or otherwise removing forest produce and other activities in public or provisional forests without a permit are provided for under the *Forest Conservation and Management Act* No. 34 of 2016. The statute creates a clear public interest in protecting forest resources and prescribes penalties for unauthorized activities in protected areas.



Sentences for offences against protected forest resources must be considered in light of the statutory regime and the need to deter widespread destruction of forest resources.

11. Section 64 (1)(a) of The *Forest Conservation and Management Act* No. 34 of 2016 dictates that : Except under a licence or permit or a management agreement issued or entered into under this Act, no person shall, in a public or provisional forest :
 - a. fell, cut, take, burn, injure or remove any forest produce;
 - b. enter any part thereof which may be closed to any person
12. Section 9(1) of the *Protected Areas Act* cap 204 dictates that:

“Any person who is in a protected area without permission contrary to the provisions of section 3, or who fails to comply with any order issued under that section, or who fails to comply with any direction given to him under section 4, or who refuses to allow himself to be searched under section 5, shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or to a fine not exceeding five thousand shillings, or to both such imprisonment and fine.”
13. In resentencing and sentence review proceedings the Court is guided by established sentencing principles, which are; the gravity of the offence, aggravating and mitigating factors, the offender’s antecedents, public interest which includes deterrence and protection of natural resources, and the statutory penalties. The Court may consider non-custodial alternatives including community service orders where the law and facts permit, but the option depends on the nature of the offence, the statutory maxima, and available evidence in mitigation including probation reports or medical reports where relevant. The National Sentencing Policy Guidelines emphasize the need to avoid unnecessary custodial sentences where appropriate but also to protect public interest and ensure proportionality.
14. In the case of Republic v Lopombogi (Criminal Case E002 of 2021) KEHC 2385 (KLR), the high court in relation to sentencing held that:
15. “The key principles behind Kenya’s new sentencing guidelines are; ensuring fairness and Right Protection. These principles underpin the sentencing process aiming to bring clarity and consistency to the systems these are:
 - a. Proportionality Sentence - must match the gravity of the offense, considering the factual foreseeable and intended impact and the offenders' responsibility.
 - b. Equality/uniformity/Consistency and impartiality- Similar offenses in similar circumstances should lead to similar sentencing promoting fairness.
 - c. Accountability and Transparency - clear law-based reasoning for sentencing decisions is crucial, aligning with legal principles and the guidelines.
 - d. Inclusiveness - Both offenders and victims should have a role in and be informed about the sentencing process, promoting a comprehensive approach.
 - e. The totality of sentence - Sentencing for multiple counts should be just and proportionate considering the offender's overall behavior
 - f. Respect for human rights and fundamental freedoms sentencing should uphold rights dignity and freedoms fostering rights rights-oriented environment in Kenya.”



16. The trial court's ordering of concurrent sentences and provision of a fine option on Count one are features of the sentence which, on their face, indicate the subordinate court exercised tempered discretion and in part sought to limit. The concurrence of sentences and the fine alternative are indicators of leniency in sentencing when compared to a cumulative ordering that would have produced a far longer effective term. Those facts prove that the Principal Magistrate's Court at Butali exercised discretion.

17. The applicant relies on several mitigating factors:

- a. He is a first-time offender
- b. He is the sole breadwinner with a lactating wife and school going children
- c. He is sickly and cannot withstand harsh prison conditions
- d. He was misled by police to plead guilty.

There is no medical report, hospital records, or certified statement to substantiate the claim of ill-health. Absent medical evidence the Court cannot give weight to the ill-health claim as a basis to overturn a custodial sentence.

18. In *Kengere v Aisha Motor Dealers Ltd & 2 others*, the court on assessing the burden of proof, held that:

“Section 107 (1) of the *Evidence Act* provides that:Whoever desires any court to give judgment as to any legal right or liability dependant on the existence of facts which he asserts must prove that those facts exist..... This refers to the legal burden of proof. There is, however, an evidential burden of proof which is captured in Sections 109 and 112 of the *Evidence Act* as follows: 109.The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of the fact shall lie on any particular person.”

19. The claim that the plea was induced by police is serious but again is a bald assertion in the applicant's affidavit. If an accused wishes to impugn the voluntariness of a plea the proper mechanism is usually by way of appeal.

20. Community service is not an automatic substitution and is fact-sensitive. The Court requires a proper pre-sentence investigation, a probation report, and evidence that the nature of the offence and the offender's circumstances justify such an order. The Sentencing Policy Guidelines requires that such alternatives be considered where suitable, but they do not mandate substitution in the absence of the requisite evidential foundation.

21. The trial court's decision to order that the sentences run concurrently and to provide a fine option on Count 1 are circumstances showing that the Principal Magistrate's Court at Butali exercised its sentencing discretion with some measure of moderation. That consideration must be weighed against the applicant's claim for further leniency. The Court must be cautious in substituting its view of an appropriate sentence where the subordinate court has demonstrably considered the options and imposed a moderated sentence within the statutory framework.

Orders

22. The application for review of sentence dated 24 June 2025 is dismissed.

23. The magistrate exercised commendable discretion and clear leniency by ordering the sentences to run concurrently rather than consecutively, significantly reducing the applicant's overall punishment.



Moreover, providing an option of a fine for count one further reflects the magistrate's balanced and merciful approach.

24. No order as to costs.
25. Right of Appeal 14 days explained.
26. File is closed.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 26TH DAY OF NOVEMBER, 2025.

S.MBUNGI

JUDGE

In the presence of:-

CA: Angong'a

Ms. Osoro for ODPP present online.

