

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CRIMINAL REVISION E400 OF 2025

PHYLIS KORIR
APPLICANT

VERSUS

REPUBLIC.....
.....RESPONDENT

Coram: Before Justice R. Nyakundi
M/s Sidi Kirenge for the State
Oduor Munyua Advocate for the Applicant

RULING

1. Before Court is an application for rehearsing review of sentence arising from SPM's Court Iten Criminal No. E969 of 2025 (Pursuant to Article 22(1), 23(1), 159(2), 165(3)(a), (b) & (d), and 258(1) of the Constitution of Kenya; Sections 354, 362 & 364 of the Criminal Procedure Code; and all other enabling provisions of the law. The same is seeking for orders:
 - a) *THAT this Application be certified as urgent and heard on a priority basis.*
 - b) *THAT this Honorable Court be pleased to review, vary, and/or substitute the custodial sentence imposed upon the Applicant in SPM's Court Iten CR No. E969 of 2025, with a non-custodial or community-based sentence.*
 - c) *THAT such review be undertaken with a view to allowing the Applicant to reunite with her family during the festive season, subject to any reasonable conditions the Court may impose.*
 - d) *THAT the Court grants such further or other orders as may be just, equitable, and expedient in the circumstances.*
2. Which application is based on the grounds that; -

- a. *The Applicant is a first-time offender.*
 - b. *The Applicant is the sole caregiver to her family.*
 - c. *The Applicant is jobless, indigent, and socially vulnerable, with no income or alternative caregiving support.*
 - d. *The Applicant has a fixed place of abode at Kaptarakwa village and enjoys strong community ties.*
 - e. *The Applicant was sentenced to nine (8) months' imprisonment and or pay a fine of Kshs 100,000/= and is unable to raise the fee imposed.*
 - f. *The Applicant has demonstrated genuine remorse and possesses a high likelihood of rehabilitation.*
 - g. *This Honorable Court is vested with supervisory, revisionary, and constitutional jurisdiction to review and correct sentences that may occasion injustice or disproportionate hardship.*
3. The application is supported by an affidavit sworn by Anne Murugi Munyua who depones as follows:
- a) *THAT I am conversant with the facts and circumstances giving rise to this Application, the same having arisen in the course of my professional representation of the Applicant.*
 - b) *THAT the Applicant, Phylis Korir is female adult and a first-time offender.*
 - c) *THAT the Applicant is the sole and primary caregiver to her family.*
 - d) *THAT the Applicant is jobless, indigent, and without any income or alternative family support, rendering her socially and economically vulnerable.*
 - e) *THAT the Applicant resides at Kaptarakwa, within the jurisdiction of the Chief of Kaptarakwa, evidencing a fixed abode and strong community ties.*
 - f) *THAT the Applicant has acknowledged her wrongdoing, expressed sincere remorse, and demonstrated insight into her conduct, thereby exhibiting excellent prospects for rehabilitation.*

- g) *THAT the Applicant was sentenced to Eight (8) months' imprisonment and or pay a fine of kshs 100,000/= and is unable to pay thus continues to suffer in custody which has been sufficient to impress upon her the seriousness of the offence.*
 - h) *THAT continued incarceration will occasion disproportionate hardship, not only to the Applicant but more critically to her young family whose welfare and best interests are constitutionally protected.*
 - i) *THAT I verily believe that the objectives of sentencing—particularly rehabilitation and reintegration—would be better served through a non-custodial or community-based sentence.*
 - j) *THAT I therefore humbly pray that this Honorable Court urgently reviews the sentence herein and grants a resentencing determination culminating in the Applicant's immediate release, or in the alternative, a compassionate and proportionate sentence.*
 - k) *THAT this Affidavit is sworn in good faith in the interests of justice, fairness, dignity, and humanity.*
4. In addition, the Probation Officer's Report was responsive in recommending for a non-custodial sentence on probation for the balance of the period computed at 6 months at Kaptarakwa Chief's Office to be supervised by the Probation Office.

Decision

- 5. The review of sentence is based on Article 50 (2) (p) & (q) of the Constitution and Section 362 as read with 364 of the Criminal Procedure Code. This Court draws its jurisdiction from Article 165(6) & (7) of the Constitution.
- 6. The other binder provisions in sentencing include Article 10 & 27 of the Constitution and in addition adherence to domestic and International Law which is part of the sources of Kenyan Law under Article 2 (5) & (6) of the Constitution. The framework of it is provided for in our Sentencing Policy Guidelines as herein reiterated:

- **Adherence to domestic and international law with due regard to recognized international and regional standards on sentencing:** Domestic law sets out the precise sentences to be imposed for each offence that courts must adhere to. In addition, international legal instruments, which have the force of law under Article 2 (6) of the Constitution of Kenya, should be applied. Reference should also be made to recognized international and regional standards and principles on sentencing, which though not binding, provide important guidance during sentencing. Relevant international and regional legal instruments and guidelines include but are not limited to:
 - a) African Charter on the Rights and Welfare of the Child (adopted in 1990, entered into force on 29th November 1999) OAU Doc. CAB/LEG/24.9/49.
 - b) African Union Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (proclaimed by the African Commission on Human and Peoples' Rights) DOC/OS (XXX) 247.
 - c) Convention on the Rights of the Child (adopted and opened for signature, ratification and accession by UNGA Resolution. 44/25 of 20th November 1989, entered into force on 2nd September 1990).
 - d) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted and opened for signature, ratification and accession by UNGA Resolution. 39/46 of 10th December 1984, entered into force on 26th June 1987).
 - e) Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (adopted by UNGA Resolution 40/34 of 29th November 1985).
 - f) Guidelines for Action on Children in the Criminal Justice System (recommended by ECOSOC Resolution. 1997/30 of 21st July 1997).
 - g) International Covenant on Civil and Political Rights (adopted by UNGA Resolution 2200 A (XXI) of 16th December 1966, entered into force on 23rd March 1976) 999 UNTS 171 (ICCPR).

- h) *Kampala Declaration on Prison Conditions in Africa and Plan of Action (adopted by a Conference of African Countries on 21st September 1996).*
 - i) *Ouagadougou Plan of Action Adopted on Accelerating Prisons and Penal Reforms in Africa (adopted by the African Commission on Human and Peoples' Rights on 20th November 2003) ACHPR /Resolution 64 (XXXIV) 03).*
 - j) *Standard Minimum Rules for the Treatment of Prisoners (adopted by the United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and approved by ECOSOC Resolution 663 C (XXIV) of 31st July 1957 and 2076 (LXII) of 13th May 1977).*
 - k) *United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) (adopted and proclaimed by the UNGA Resolution 45/113 of 14th December 1990).*
 - l) *United Nations Rules for the Protection of Juveniles Deprived of their Liberty (adopted by UNGA Resolution 45/113 of 14th December 1990).*
 - m) *United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures 1985 for Women Offender (adopted by UNGA Resolution 65/229 of 21st December 2010).*
 - n) *United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules) (adopted by UNGA Resolution 45/110 of 14th December 1990).*
 - o) *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) (adopted by UNGA Resolution 40/33 of 29th November 1985).*
7. In this respect the Court also shall be guided by the Sentencing Policy Guidelines of the Judiciary which provides for the aims and principles of sentencing *inter alia*:
- **Retribution** – punishment is justified merely because the offender has committed a wrong.

- **Deterrence** – punishment is justified in order to clear the offender from committing further crimes in the future and to deter other members of society in general.
 - **Rehabilitation** – the offender needs to be rehabilitated so that he will behave in a socially acceptable manner.
 - **Incapacitation** – justifies the incarceration of the offender for the protection of society.
 - **Condemnation** – the infliction of punishment upon the guilty person is the symbolic condemnation by society of the individual.
 - **Proportionality:** The sentence meted out must be proportionate to the offending behavior. The punishment must not be more or less than is merited in view of the gravity of the offence. Proportionality of the sentence to the offending behavior is weighted in view of the actual, foreseeable and intended impact of the offence as well as the responsibility of the offender.
 - **Equality/Uniformity/Parity/Consistency/Impartiality:** Same sentences should be imposed for same offences committed by offenders in similar circumstances.
 - **Accountability/Transparency:** The reasons and considerations leading to the sentence should be clearly set out and in accordance to the law and the sentencing principles laid out in these guidelines.
 - **Inclusiveness:** Both the offender and the victim should participate in and inform the sentencing process.
8. As structured approach to sentencing review focusing of moving offenders from custody to non-custodial sentences by assessing proportionality, offender circumstances (vulnerabilities, family impact, and the effectiveness of alternatives, (probation and community service). The key principles involve considering in this case the child’s best interest for the very foundation that their human rights are individualized and they should not be punished through proxy for offences committed by their parents.

9. From the application on review this court is bound to consider the mitigating factors as they apply to each individual case in exercising discretion to individualize the respective sentences. Again in no order of priority they include the following:

- Youth of the offender
- Immaturity of the offender
- The mental state of the offender
- The previous good character of the offender
- Absence of premeditation
- Where appropriate, whether reparation has been made
- The pressures under which the offence was committed (Such as provocation, diminished responsibility, emotional stress or other partial excuse).
- Any incidental losses which the offender may have suffered as a result of the conviction (Such as loss of employment).
- The offender's capacity for reform
- The offender's role in the commission of the offence, where more than one offender was involved
- Co-operation with the police by the offender after commission of the offence
- Personal characteristics of the offender, such as physical disability or the like
- Family background of the offender
- Expressions of remorse by the offender.

10. I have given due regard to the law on sentencing as prescribed by Parliament together with the Judiciary Sentencing Policy Guidelines which sets out the various aims and principles to be considered in the process of making a decision by a Judge or Magistrate as to whether to pass a custodial versus a non-custodial sentence. From the record there are certain key factors which favor the applicant from the word go to benefit with an order of non-custodial sentence as against custodial sanctions. I

am therefore in agreement with the Probation Officer that her sentence be reviewed by setting aside the custodial sentence so that she can serve the remainder of the period on probation for a period of 6 months being supervised by the Probation Office at Elgeyo Marakwet. This therefore requires that the Officer in Charge Prisons do remove the Applicant from the custodial sentence wards, and have her handed over to the Director of Probation Services who will supervise the non-custodial sentence of 8 months and thereafter file a report of completion with the Deputy Registrar of the High Court at Eldoret. It is so ordered.

**GIVEN UNDER MY HAND AND SEAL OF THIS HONORABLE COURT THIS
22ND DAY OF DECEMBER 2025.**

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**R. NYAKUNDI
JUDGE**

