



**Kosgei v Republic (Criminal Revision E392 of 2025)
[2025] KEHC 19114 (KLR) (22 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 19114 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E392 OF 2025
RN NYAKUNDI, J
DECEMBER 22, 2025**

BETWEEN

NIGHT KOSGEI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before Court is an application for rehearsing review of sentence arising from SPM’s Court Iten Criminal No. E1148 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 Honourable Court be pleased to review, vary, and/or substitute the custodial sentence imposed upon the Applicant in SPM’s Court Iten CR No. E1139 of 2025.
 - c. That the sentence be converted to a non-custodial or community-based sentence, or such other compassionate alternative as the Court may deem fit, to allow the Applicant to care for her minor children, particularly the breastfeeding infant.
 - 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 28-year-old first-time offender with no previous criminal record.
 - b. The Applicant is the primary caregiver to a two-month-old breastfeeding infant currently in custody with her.



- c. The Applicant is a mother to two other minor children who have been left without parental care.
 - d. The offence arose from economic hardship and parental desperation, not from criminal inclination. 5. The Applicant has expressed genuine remorse and demonstrated insight and willingness to reform.
 - e. The Applicant has a fixed place of residence and strong community ties in Elgeyo Marakwet County.
 - f. The Applicant was sentenced to two (2) months' imprisonment and has already served ten (10) days.
 - g. This Honourable Court is vested with revisionary, supervisory, and constitutional jurisdiction to intervene where a sentence occasions injustice or disproportionate hardship.
3. The application is supported by an affidavit sworn by Anne Murugi Munyua who deponed as follows:
- a. That I am the Advocate on record for the Applicant herein and competent to swear this Affidavit.
 - b. That I am conversant with the facts of this matter, having obtained the same through professional engagement and interviews conducted within the correctional institution.
 - c. That the Applicant, Night Kosgei, is a 28-year-old, unmarried first-time offender with no prior criminal record.
 - d. That the Applicant is a mother of three minor children, namely: Ryan Kipchumba (9 years), Blessing Jeruto (4 years), and Gift Jepchirchir (2 months).
 - e. That the Applicant is currently incarcerated with her two-month-old breastfeeding infant, who is wholly dependent on her for survival and wellbeing.
 - f. That the two older children are temporarily under the care of their grandfather, a situation that is emotionally and economically precarious.
 - g. That the Applicant committed the offence out of economic desperation and the need to provide food for her children, not out of criminal intent.
 - h. That the Applicant has acknowledged her wrongdoing, expressed sincere remorse, and undertaken to pursue lawful means of livelihood.
 - i. That the Applicant resides at Kipsaos Sub-Location, Elgeyo Marakwet County, and has a fixed abode and strong community ties.
 - j. That the Applicant was sentenced to two (2) months' imprisonment and has already served ten (10) days, which has sufficiently impressed upon her the seriousness of the offence.
 - k. That continued incarceration will occasion disproportionate hardship to innocent children, contrary to the best interests of the child and the objectives of sentencing.
 - l. That I verily believe that the goals of punishment, deterrence, and rehabilitation would be better served through a non-custodial or community based sentence.



- m. That I therefore humbly pray that this Honourable Court reviews the sentence and grants a resentencing determination culminating in the Applicant's immediate release, or in the alternative, a compassionate and proportionate sentence.
- n. That this Affidavit is sworn in good faith in the interests of justice, dignity, and humanity.
- 1. In addition, the Probation Officer's Report was responsive in recommending for a non-custodial sentence on C.S.O for the balance of the period computed at 3 weeks to be served at Kapsaos Chief's 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 that her sentence be reviewed by setting aside the custodial sentence so that she can serve the remainder of the period on C.S.O at Kapsaos Chief's Office. 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 three (3) weeks 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

