



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

MISCELLANEOUS CRIMINAL APPLICATION NO. E023 OF 2025

NANCY NJOKI KAHUGU.....

APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

[1] By a Notice of Motion dated 25/6/2025, the applicant seeks specific relief for reduction of sentences and substitution of an order for Probation for the remaining period of imprisonment as follows:

“1. THAT, this application be certified urgent and heard on priority basis expeditiously.

2. THAT, the provisions of SECTION 4 (b) OF THE PROBATION OF OFFENDERS ACT CAP. 64 LAWS OF KENYA to be read in a manner that comply with the United Nations Minimum Rules For Non-Custodial Measures (The Tokyo Rules) paragraph 2.1 which provides for the scope of non-custodial measures to apply to all persons subject to prosecution, trial, or the execution of a sentence, at all stages of administration of justice, since International Laws form part of our Laws under Article (2), (b), (c). Therefore, right to equal protection shall be accorded to the petitioners herein.

3. THAT, as a convict sentenced for imprisonment to benefit from Community Service Order Act Section 3 (b) so long as she has served a sentence and thereby have a prison term of less than three years and below to be served as a noncustodial sentence

which is in line with the Judiciary policy of decongesting the prison.

4. Such other orders the Court may deem fair and just.”

[2] The grounds of the application were set out in the application as follows:

Grounds: -

(a) The Respondent is bound by the provisions of the Constitution and the written law and to act in defence of the same.

(b) Section 7 (1) of the Sixth schedule to the Constitution contemplates that all laws in force before the promulgation of the constitution have to be brought into conformity with the constitution either through new substantive legislation or amendments within the period under 4th Schedule to the constitution for conformity with the Persons Deprived of Liberty Act 2014 for purposes of decongestion of prisons as one of the Government policies on the administration of justice.

Cc) It is in the interest of justice that this application be allowed as prayed herein above.

(d) This matter is about provisions of the provisions of SECTION 4 (b) OF THE PROBATION OF OFFENDERS ACT CAP. 64 LAWS OF KENYA to be read in a manner that comply with the United Nations Minimum Rules For Non-Custodial Measures (The Tokyo Rules) paragraph 2.1 which provides for the scope of noncustodial measures to apply to all persons subject to prosecution, trial, or the execution of a sentence, at all stages of administration of justice, since International Laws form part of our Laws under Article (2), (b), (c). Therefore, in line with the Constitution 2010 under Chapter 4, the provision should be interpreted to take into consideration of time spent in prison starting from the date the convicted person got into custody. This shall breathe life to the provision and shall enhance effective administration of justice which is in line with the reform processes provided by the Kenya Prison Services and, the Government and Judiciary Policy on decongestion of Prisons.

Ce) SECTION 4 (b) OF THE PROBATION OF OFFENDERS ACT CAP. 64 LAWS OF KENYA to be read in a manner that comply with the United Nations Minimum Rules For Non-Custodial Measures (The Tokyo Rules) paragraph 2.1 which provides for the scope of non-custodial measures to apply to all persons subject to prosecution, trial, or the execution of a sentence, at all stages of administration of justice.

(f) I, the applicant was arrested and charged in IV counts for the offence of Attempting to steal, personation, forgery, uttering false documents, forgery, uttering a false documents

(g) THAT, I am remaining with a sentence of 2 years and 9 months to completion of sentence.

(h) While section 4 (2) of the Probation of Offenders Act states as follows:

(2) Where any parson is convicted of an offence 0y the High Court and the court is of the opinion that, having regard to the youth, character, antecedents, home surroundings. health or mental condition of the offender, or to the nature of the offence, or to any extenuating circumstances in which, the offence was committed, it is expedient to release the offender on probation, the court may, in lieu of sentencing or any punishment, make a probation order, and may require the offender to enter into a recognizance, with or without sureties, in such sum as the court may deem fit.

(i) I, the applicant seeks to argue that SECTION 4 (b) OF THE PROBATION OF OFFENDERS ACT CAP. 64 LAWS OF KENYA to be read in a manner that comply with the United Nations Minimum Rules For Non-Custodial Measures (The Tokyo

Rules) paragraph 2.1 which provides for the scope of non-custodial measures to apply to all persons subject to prosecution, trial, or the execution of a sentence, at all stages of administration of justice.

PRAYER

I, the applicant humbly pray for the following:

- a) A declaration that SECTION 4 (b) OF THE PROBATION OF OFFENDERS ACT CAP. 64 LAWS OF KENYA to be read in a manner that complies with the United Nations Minimum Rules for Non-Custodial Measures (The Tokyo Rules) paragraph 2.1 which provides for the scope of non-custodial measures to apply to all persons subject to prosecution, trial, or the execution of a sentence, at all stages of administration of justice.*
- b) An order directing the Respondent to consider the Government and Judiciary policy of decongesting prisons as it seeks to reply to this application.*
- c) Orders directing a probation Officer to make a probation report for I, the applicant for the noncustodial sentence to be meted out.*
- d) An order sentencing, that the remaining part of my sentence be served under a probation order or on unconditional discharges.*
- e) Any other order that the court may deem appropriate in the circumstances.”*

[3] The application was supported by an affidavit sworn on 25/6/2025 as follows:

SUPPORTING AFFIDAVIT

I NANCY NJOKI KAHUGU alias LUCY KARUANA KURIA a prisoner held at Langata Women Prison Clo Officer in charge do hereby make an oath and states as follow

1....

2. THAT I was convicted and sentenced IV counts for the offence of Attempting to steal, personation, forgery, uttering false documents, forgery, uttering false documents.

3. THAT, I am remaining with a sentence of 2 years and 9 months to completion of sentence.

4. THAT, I have never left prison since arrest in 2021 to date, thus

Rehabilitated/reformed.

5. *THAT, I am not disputing the sentence meted out but having been in prison for that long, having been reformed and rehabilitated, and do promise that . I trust that to be fair, this Hon Court may subject my remaining sentence to be considered and be replaced with a probation sentence, to allow me complete the period while at home.*

6. *THAT, this Honorable Court has the Jurisdiction to breath l~ to any Act of Parliament for justice not only to be done but to be seen to have been done.*

7. *THAT, I beg this Hon. court to exercise its powers bestowed to it by the Constitution.*

8. *THAT, I beg this Hon. Court to declare SECTION 4 (b) OF THE PROBATION OF OFFENDERS ACT CAP. 64 LAWS OF KENYA to be read in a manner that complies with the United Nations Minimum Rules For Non-Custodial Measures (The Tokyo Rules) paragraph 2.1 which provides for the scope of non-custodial measures to apply to all persons subject to prosecution., trial, or the execution of a sentence, at all stages of administration of justice for a probation report to be considered.*

9. *THAT, it is a fundamental duty of all state organs to respect, protect, promote, and fulfil the applicant's rights and fundamental freedoms in the Bill of Rights including the tigt of equality and non-discrimination.*

10. ***THAT, I humbly request the Honorable court consider my application by considering the following mitigating factors;***

11. ***THAT, I am remorseful and contrite for what I did. I sincerely apologize, highly regret and do promise that it shall never happen again. I highly regret for the commission of the offence and I ask for forgiveness of both the court and the victim.***

12. ***THAT, I am a first offender and I have never been charged, arrested and convicted before of any other offence. I do promise that this will never repeat itself not only in the same offence but in any other in future. I promise that this is the first and the last***

commission or omission of any other offence for I have learnt my lesson and the importance of being a good citizen.

13. **THAT**, *for the duration I have been in prison, I have been rehabilitated and reformed. I have been engaged in various rehabilitation programs which have impacted positively in my life and will further assist me be self-reliance and self-employed.*

14. **THAT**, *I have gone through vigorous counselling which have helped me to make right decisions, to do what is right and be cautious before getting involved in any action. I have learnt to make informed decisions for choices have consequences.*

15. **THAT**, *I humbly pray for the Honorable court to consideration being in prison since incarceration in 2021 and also humbly request the Honorable court to grant me a second chance by granting me a non-custodial sentence.*

16. **THAT**, *I humbly request for the Honorable court to grant me another chance to reintegrate back to the society, by granting me a non-custodial sentence for the remaining time of sentence.*

17. **THAT**, *the facts deponed herein are true to the best of my knowledge and understanding and belief.*

Dated at NAIROBI on this 25TH day of JUNE 2025

SWORN BY THE SAID

NANCY NJOKI KAHUCU alias LUCY KARUANA KURIA

LTA. 304/25/LS APPLICANT”

[4] The applicant also filed submissions dated 5/11/2025 in support of his application. In urging that this Court has jurisdiction to hear and determine the application “requesting substitution of my custodial sentence to a probation for the remaining 2 years and 4 months to completion of the sentence”, the applicant submitted at paragraphs 11 – 15 of his submissions as follows:

“11. Article 48. The State shall ensure access to justice for all persons and. if any fee is required. it shall be reasonable and shall not impede access to justice.

12. Article 159 (2) (a) (d), in exercising judicial authority, the courts and tribunals shall be guided by the following principles-
 (a) justice shall be done to all, irrespective of status; (b) justice shall be administered without undue regard to procedural technicalities. I rely Article 259 (1) (a), (b) & (c).

13. I rely on section 364 of the Criminal Procedure Code that High Court has revisionary powers from lower court cases.

14. My lord, I was convicted and sentenced at Magistrate court at Wanguru for the and now before this Honorable court pleading for sentence review.

15. My lady, I humbly plead with for the Honorable court to grant me sentence review, through my humble prayer for a substitute from a custodial sentence to a Probation sentence for the remaining 2 years and 4 months to completion of sentence.”

[5] The Probation Officer’s report dated 22/1/2026 filed at the invitation of the Court in view of the Applicant’s application for an order of probation as follows:

“PRISON REHABILITATION.

The Langata women prison administration reported that for the time the petitioner has been in custody, she has been of good behavior, never been found with a breach of the rules. She works in the knitting industry, after training in the skill upon incarceration. She is also active in church affairs. They described her as a respectful person who is now rehabilitated.

CONCLUSION

Your Honor before you is an elderly woman at 67 years of age. She agrees that she was of criminal character because of greed and staying in the company of negative peers. However, she pleads for forgiveness from both the court and the complainant. She has been in custody for 8 years and has been put through programs that have rehabilitated. She promises to live a crime free life. While in custody she lost her spouse. Her one child lives in Dandora and has promised to offer her accommodation upon release. Her siblings,; through the sister Loise have also

promised to help her with necessities, medical care and accommodation if need arises. As explained above, the complainants failed to give their views citing lack of legal officer to address the case and the previous one had passed on. The community has no issues with her and the area chief is willing to be involved in her supervision while she serves on no custodial.

RECOMMENDATION

Your honour, in view of the above information and consideration of her poor health, I recommend a probation order.

Ayuma A Otukho

Probation Officer - Kirinyaga County

22/01/2026”

[6] The Counsel for the DPP did not oppose the application or file any submissions and only said that –

“We do not wish to put in submissions. We do not oppose the application as it is for the remainder of 2 years.”

[7] The Court then asked the G.K. Prison for a Prison Report on the applicant which was filed on 24/3/2026 as follows:

“DATE: 24th MARCH, 2026

REF: LWP/PR/3/VOL.VII/65

TO WHOM IT MAY CONCERN

Dear Sir/Madam.

**RE: RECOMMENDATION REPORT IN RESPECT OF
LTA/304/2025ILS NANCY NJOKI KAHUGU ALIAS LUCY
KARUANA KUIRA**

*The above-mentioned inmate was admitted in our custody on 17.5.2025 on transfer from Embu women prison. **She was admitted into prison on 03.11.2021** after being convicted for the offence of count 1. attempting to steal; count 2. Forgery; count 3. uttering a false document; and count 4. personation by SPMS court at Wanguru, Case No. E627/21. She was sentenced to 17 years which was reduced to 9 years 6 months imprisonment as per the **appeal dated 23rd December 2023.***

Nancy Njoki Kahugu is obedient and has good behavior since her admission to prison and as a result she is now in stage IV of the progressive stage system.

She is deployed at the industry under knitting section for her rehabilitation program. She has done various training courses which include; Prison project program of bible league international, Ufunuo Program, Christian discipleship programe and The Prisoners Journey.

She interacts well with fellow inmates and staff.

She is an active member of the Catholic church.

Any assistance accorded to her will be highly appreciated.

~

LINDA KERUBO (SSI)

FOR: OFFICER IN CHARGE

LANGATA WOMEN MAXIMUM SECURITY PRISON”

- [8] The Prison Report disclosed that the applicant had been in custody for 5 years (not 8 years as stated in the Probation Officer’s report above) since admission on 03/11/ 2021 upon conviction and sentence on plea of guilty (arraignment in court on 4/10/2021) and that there had been previous proceedings in which the High Court had reduced the applicant’s sentence. On registry inquiry the court file on Criminal Revision No. E163 of 2023, an application for sentence review was discovered. The Ruling on the Revision of the Applicant’s Sentences delivered by Mwongo, J. on 20/12/2023 is set out in full below:

“REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

(CORAM: R. MWONGO, J.)

CRIMINAL REVISION NO. E163 OF 2023

(Original Conviction and Sentence in Criminal Case No. E627 of 2021 of the CM Magistrate's Court at Wang'uru before Hon. A.

Lorot - CM)

NANCY NJOKI KAHUGU ALIAS

LUCY
KUIRAAPPLICANT

KARUANA

VERSUS

REPUBLICRESPONDENT

RULING

1. The Applicant was charged, convicted on her on plea of guilty, and sentenced on 3.11.2021 with offences as follows:

Count 1 - Attempt to Steal Contrary to Section 389 Penal Code - 3 years imprisonment.

Count 2 - Personation Contrary to Section 382 Penal Code - 3 years imprisonment.

Count 3 - Forgery Contrary to Section 349 Penal Code - 7 years imprisonment.

Count 4 - Uttering a False Document Contrary to Section 353 as read with Section 349 Penal Code - 3 years imprisonment.

Count 5 - Forgery Contrary to Section 349 Penal Code - 7 years imprisonment.

Count 6 - Uttering a False Document Contrary to Section 353 as read with Section 349 Penal Code - 3 years imprisonment.

2. The trial magistrate directed that Counts 1 & 2 to run concurrently 3 & 4 to run concurrently and 5 & 6 to run concurrently.

3. The ultimate effect of the sentences is that the Applicant will serve a combined continuous Seven (7) years sentence of imprisonment.

4. The Applicant seeks a lesser sentence. She is not challenging the convictions. Her grounds are that she is a first offender; was ignorant; that the sentences all emanated from a single transaction; that she is remorseful; that she has a diabetic condition; and will suffer prejudice if the application is not granted.

5. The state submits that the sentences as imposed are proper in compliance with Section 14 Criminal Procedure Code and the Sentencing Policy

Guidelines.

6. *The sentences that are lawful for the offences charged are as follows:*

Count 1 - Section 389 - A term not exceeding 7 years.

Count 2 - Section 382 - A term of up to 7 years if property is involved.

Count 3 - Section 349 - A term of 3 years.

Count 4 - Section 353 and 349 - A term of 3 years.

Count 5 - Section 349 - A term of 3 years.

Count 6 - Section 353 and 349 - A term of 3 years.

7. *All the offences took place as part of one single event on 1st October 2021 whereby the Applicant presented herself to Bingwa Sacco and uttered forged or personated with intent to defraud or withdraw moneys from the Sacco.*

8. *The Sentencing guidelines at Paragraph 7.13 provide:*

"Where the offence emanates from a single transaction, the sentences should run concurrently.

However, where the offences are committed in the course of multiple transactions and where there are multiple victims, the sentences should run consecutively. "

9. *The Sentencing guidelines encapsulate the principles of sentencing enunciated in cases from as far as back in 1946 in Sawadi Mukara c/o Abdalla Aligwaua [1946] 13 EACA 97; & Peter Mbugua Kabui v Re [2016] eKLR where the court held:*

"As a general principle, the practise is that if an accused person commits a series of offences at the same time in a single act!

transaction, a concurrent sentence should be given. However, if separate and distinct offences are committed in different criminal transactions, even though the counts may be in one charge and in one trial, it is not illegal to mete out a consecutive term of imprisonment. "

10. In the present case, the trial court lawfully sentenced the Applicant except in the following with respect:

a) In Count 3, seven (7) years was meted when the maximum under Section 349 is three (3) years.

b) In Count 5, Seven (7) years was meted when the maximum under Section 349 is three (3) years.

Disposition

11. Accordingly, I would substitute the seven (7) years sentence meted by the trial court in Counts 3 and 5, for a sentence of three (3) years in accordance with Section 349 Penal Code in each case.

12. The trial court made no error in my view, in determining the orders as to concurrency of the sentences, and I would not interfere with any other aspect of the sentence.

13. Accordingly, I determine that the applicant's sentence are all for a period of three (3) years on each count. Thus, the sentences are as follows:

Counts 1 and 2, three (3) years imprisonment each, to run concurrently.

Counts 3 and 4, three (3) years imprisonment each, to run concurrently.

Count 5 and 6, three years imprisonment each, to run concurrently.

14. In addition, I hereby impose a fine of One Hundred Thousand Shillings (Kshs.100,000/=) which shall be paid by the Accused or in default, a sentence term of 6 months/=.

15. Orders accordingly.

Delivered At Kerugoya on this 20th day of December, 2023

R. MWONGO,

JUDGE.

Delivered in the presence of:

1. Applicant Present in Person
2. Mamba”

[9] There is no provision for multiple review applications for reconsideration of a sentence by the subordinate court. Once this Court, however constituted, has dealt with the matter of resentencing or sentence review in accordance with its supervisory jurisdiction over the subordinate trial court, the power to resentence is spent, and an applicant cannot again seek revision of the sentence by the Court.

[10] Indeed, even if it were by way of an appeal from conviction and or sentence, a second appeal to the Court of Appeal is not permissible as the Court of Appeal has only jurisdiction on second appeal to deal with matters of law and **sentence** including the **severity** of sentence are statutorily designated as matters of fact by section 361 (1) as follows:

“361. Second appeals

(1) A party to an appeal from a subordinate court may, subject to subsection (8) , appeal against a decision of the High Court in its appellate jurisdiction on a matter of law, and the Court of Appeal shall not hear an appeal under this section—

(a) on a matter of fact, and severity of sentence is a matter of fact; or

(b) against sentence, except where a sentence has been enhanced by the High Court, unless the subordinate court had no power under section 7 to pass that sentence.”

[11] The Court (Mwongo, J.) has already dealt with an application of revision of sentence in this matter, and made substantive order reducing the periods of imprisonment and imposing a fine and default sentence for failure to pay the fine. If it is considered that the imposition of a fine of Ksh.100,000/- and sentence of imprisonment in default is an enhancement of the sentence, then the applicant may properly lodge an appeal against the sentence in terms of section 361 (1) (b) of the Criminal Procedure Code set out above.

[12] The Court is on the question of resentencing **functus officio** having already determined that question by the order of the Court (Mwongo, J. of 20/12/2023 in Misc. Criminal Application No. E063 of 2023 set out above.

The Court has, consequently, no jurisdiction to deal with the application for re-sentencing in this matter and it shall be declined.

Abuse of process

[13] The Court cannot be asked to review a sentence by multiple applications *ad infinitum*. It is improper practice and an abuse of the court process to seek review of sentence by multiple review applications and appeals before the Court.

[14] The principle of law on appeal in cases of a plea of guilty is that appeal may only be against severity of sentence. See section 348 of the Criminal Procedure Code, which provides that-

“348. No appeal on plea of guilty, nor in petty cases

No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.

[Act No. 17 of 1967, s. 31.]”

[15] In this case, while not seeking to appeal the conviction the applicant had filed an appeal **No. E037 of 2025** dated 4/6/2025 by an application entitled **“Sentence Review Application”**. Having been filed later than the present Notice of Motion application **Misc. Cri. Appl No. E023 of 2025** dated 25/6/2025, which was instituted on 25/7/2025 and seeking only the review of sentence, the “appeal” file (really another application for revision of sentence) was submerged in the application for resentencing herein, and it will abide the outcome of this application. The applicant did not disclose the fact of the filing of the appeal No. E037 of 2025 or the already determined Misc. Criminal Application NO. E163 of 2023. See paragraph 14 of the applicant’s Submissions above.

[16] Significantly, although an issue of the applicant’s health is taken up by the Probation Officer in the Report, which was invited by the Court, **it is not mentioned at all in the Prison Report which was invited by the Court or in the applicant’s own supporting affidavit to her application, which was based only on the fact of long custody in prison and alleged reformation over the time.**

[17] While the Court does not hold that an application for re-sentencing may not be supported by the ground of the poor health of an inmate, it is simply not the case in this application as the applicant does not so urge in her application for resentencing; the Prison report does not disclose any health challenges and there is no report, and the application is not brought, by the prison authorities indicating that the Prison's medical facility is unable to deal with any medical health challenge the inmate may present.

ORDERS

[18] Accordingly, for the reasons set out above, the Court finds, firstly, that there is no basis in jurisdiction to interfere with the sentencing discretion of a court of the same jurisdiction; and secondly, on the facts of the case, there is no changed circumstances, for this court, in the interest of justice, to interfere with the sentence which was settled by this Court differently constituted.

[19] The application for review of sentence is declined.

[20] The appeal file **HCCRA E037 of 2025** on the same matter of re-sentencing is marked settled.

[21] File Closed.

Order accordingly.

DATED AND DELIVERED THIS 9TH DAY OF APRIL 2026.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

Mr. Mwangi for the DPP.

Applicant in person.