Kimutai v Republic (Criminal Revision 45 of 2016)
[2026] KEHC 6339 (KLR) (11 May 2026) (Ruling)

Neutral citation: [2026] KEHC 6339 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CRIMINAL REVISION 45 OF 2016

RN NYAKUNDI, J

MAY 11, 2026

BETWEEN

KEVIN KIMUTAI ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

RULING

1. Before this Court is a petition of appeal dated 23rd March 2016 which seeks the following orders:

    a. I the above appellant do hereby beg to appeal the conviction and sentence of 15 years imprisonment passed upon me by the CM's Court at Eldoret on 9/3/2016 in the above criminal case on the following grounds

    b. I pleaded guilty/not guilty at trial

    c. I am a poor man and I have no money for appeal fee.

    d. That the appellant herein do humbly pray to be considered under Section 26(2) of the CPC for as may be express provided by the law under which the offence concerned is punishable a person liable to imprisonment for 15 years or any other period may I be sentenced to any shorter term.

    e. That I pleaded not guilty at first as I was confused on the honorable trial Court.

    f. That am the only son in my family and my parents are elderly people they needed my help. Due to this I now beg this honorable Court consider my prayers assisted me to go and assist my parents.

    g. Reason wherefore; I pray that my appeal be allowed conviction quashed, sentence set aside and I be set at liberty forthwith

Decision

2. This application has been considered under Art 50(2)(p)(q), 6(a)(b) as read with Section 362 & 364 of the Criminal Procedure Code. The guiding principles on review of sentence post-conviction is well articulated by the Court of Appeal in Bernard Gacheru v 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."

3. This was also the position taken by the Court in S vs. Malgas 2001 (1) SACR 469 (SCA) held that:

> " A Court exercising appellate jurisdiction cannot, in the absence of material misdirection by the trial Court, approach the question of sentence as if it were the trial Court and then substitute the sentence arrived at by it simply because it prefers it. To do so would be to usurp the sentencing discretion of the trial Court...However, even in the absence of material misdirection, an appellate Court may yet be justified in interfering with the sentence imposed by the trial Court. It may do so when the disparity between the sentence of the trial Court and the sentence which the appellate Court would have imposed had it been the trial Court is so marked that it can properly be described as "shocking", "startling" or "disturbingly inappropriate"

4. The doctrine of proportionality in sentencing is one of the fundamental aspects which actually must define the trial Courts discretion in imposing a fair and appropriate sentence. The Court in Tarry v Pryce (1987) 24 A Crim R 394, 402 had this to say:

> Although the discretionary aspect of sentencing is of great importance, there is to my mind no doubt that there is scope for a more scientific approach. A lack of consistency between sentencers dealing with run-of-the-mill cases cannot be supported by reliance on the discretionary power to sentence. The need for consistency in the punishment in like cases of like persons overrides the right of the sentencers to impose his idiosyncratic view.

5. According to the judicial process the offender committed a crime of such gravity under the *Sexual Offences Act* and therefore the right to liberty to the State for the rest of his days to serve the sentence imposed by the trial Court. It appears to the Court there are no compelling and exceptional circumstances upon which the sentence of 15 years imprisonment can be reviewed downwards so that a lesser sentence can be imposed by this Court. It is in my judgement that the criteria on revision set out under Section 362 of the CPC has not been met by the Applicant. Therefore, the application is dismissed for want of merit under Section 382 of the CPC

DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 11TH DAY OF MAY 2026.

.....

R. NYAKUNDI

JUDGE