



**Cheshire v Republic (Criminal Revision E064 of 2024)
[2025] KEHC 1087 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1087 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL REVISION E064 OF 2024
RB NGETICH, J
FEBRUARY 27, 2025**

BETWEEN

ALEX KEMBOI CHESIRE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Alex Kemboi Chesire was charged with the offence of grievous harm contrary to Section 234 of the *Penal Code*. The particulars of the charge were that the accused on the 10th day of April, 2016 at Kaptomogen village in Baringo North Sub-County within Baringo County, unlawfully did grievous harm to Jenifer Komen.
2. The accused denied the charge and the matter was set down for full trial and by judgment delivered on 27th January, 2024 the accused trial court found the accused guilty, convicted him and on the 3rd March, 2022 the applicant was sentenced to 15 years imprisonment.
3. The Applicant being dissatisfied with the decision of the trial court appealed on both conviction and sentence to the High Court vide Kabarnet High Court Criminal Appeal No.E011 of 2022 but later abandoned his appeal on conviction and asked the court to consider the 8 year period he served was in remand. This court allowed the prayer to consider period served in remand and marked appeal against conviction as withdrawn.
4. The applicant has now filed application dated 24th September, 2024 seeking review of sentence under Section 362 as read with Section 364 of the *Criminal Procedure Code* and in reliance to Article 50(2) (q). The applicant is seeking for orders of review of his sentence on the basis of his mitigating factors and new circumstances in this case.
5. The applicant is seeking review of his sentence in line with new sentencing objectives of rehabilitation, reconciliation and reintegration. The Applicant in his supporting affidavit avers that he has made



positive steps towards reconciling with the complainant and has permitted her to return and stay at his home to take care of his 8 children while awaiting his return home. When the matter came up for hearing on the 29th October, 2024, the Applicant informed the court that he is remaining with 3 years and 8 months.

Social Inquiry Report

6. From the report, the applicant dropped out of school in the year 1994 due to personal will and poor parental support. In the year 1995 he started working as a farmer up to the time of his arrest. He got married in the year 1998 and were blessed with 8 children. He has an eye condition and while in custody he is not involved in any course but fully attends the church program. The son stated that their family life has negatively been affected since the arrest of his father as the mother is always under the influence of alcohol and has already been remarried and it has forced him to be the bread winner to his siblings forcing him to do casual jobs within the community. He stated that his sisters have become victims of teenage pregnancy as he was not able to take them back to school. He prayed for the release of his father so that he could come and reorganize his family afresh.
7. The Applicant's brother stated that the applicant has been in prison for 9 years now having completed manslaughter case then he was sentenced in this case. He said he used to stay with applicant's children before they went to their mother but they are not receiving proper care as mother is alcoholic and has already remarried and has two children in the new marriage. He confirmed that the applicant's girls are at the moment victims of teenage pregnancy and leading difficult life. He says he is willing to accommodate the Applicant and facilitate his re-integration and resettlement within the community and prayed for non- custodial sentence so that he can take care of his family.
8. The circumstances of the case are that the applicant found his wife who is the victim herein in a compromising situation with another man and out of anger, he killed the man involved and caused grievous harm to his wife. He was charged with manslaughter for which he has already served 5 years imprisonment. He admits the offence as charged. He prays for non- custodial sentence so that he can continue with his parental responsibility since the victim who was his wife is currently remarried elsewhere and blessed with two children. The Applicant stated that 3 of his daughters are victims of teenage pregnancy and have support to take care of their children. He added that if granted community rehabilitation sentence he will take 2 back to school and the other TVET institution to empower her.
9. The victim who is the applicant's former wife stated that she has already forgiven the Applicant and she does not oppose him serving non-custodial sentence so that he can take care of the children. She confirmed that she is currently married and she has started a new life.
10. The area village elder and the local administrator are not opposed to applicant's early release on ground that his children are suffering both emotionally and financially. They confirm that the victim who was applicant's wife has already remarried and is not taking care Applicant's children. They also confirm that the applicant's daughters are victims of teenage pregnancy and the youngest has not attended school.
11. The prosecution counsel, Ms. Bartilol opposed review of sentence on ground that the applicant is a repeat offender having been convicted for the offence of manslaughter in Criminal case No.39 of 2017 and upon his release, he re-offended.

Determination

12. The application herein invokes the revisional jurisdiction of this court which gives the court powers, in appropriate cases, to review and vary any orders, decision or sentence passed by the trial court if the



court was satisfied that the impugned order, decision or sentence was illegal or was a product of an error or impropriety on the part of the trial court. If the court was so satisfied, the law mandated it to make appropriate orders to correct the impugned order, decision or sentence and align it with the law. The above is the import of Section 362 as read with Section 364 of the *Criminal Procedure Code*.

13. The objectives of sentencing are outlined in the 2023 *Judiciary of Kenya Sentencing Policy Guidelines* at page 15, paragraph 4.1 as follows:

Retribution: To punish the offender for his/her criminal conduct in a just manner.

Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.

Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.

Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.

Community protection: To protect the community by incapacitating the offender.

Denunciation: To communicate the community's condemnation of the criminal conduct.

14. From the social inquiry report, the victim is not opposed to review of applicant's sentence; she states that she has forgiven him and prayed for his release so that he can take care of his children. The local administration is not opposed to the applicant's prayer for review of sentence. They confirmed that his children are suffering and daughters fallen victims of teenage pregnancy due to lack of parental support as the wife who was the victim has remarried. They confirm that parental responsibility has been left to applicant's son who is struggling. I take note of the fact that the applicant has been in prison for 5 years and in my view the incarceration has served to rehabilitate him and find it appropriate to allow him serve the remaining period within the community so that it may give him opportunity to take up his parental responsibilities'.

Final Orders:-

15. Applicant to serve probation sentence for the remaining period of sentence imposed by the trial court.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 27TH DAY OF FEBRUARY 2025.

RACHEL NGETICH

JUDGE

In the presence of:

Ms. Bartilol for State.

Applicant – present

Court Assistants – Elvis/Momanyi.

