



REPUBLIC OF KENYA



KENYA LAW
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**Siareng v Republic (Criminal Revision E070 of 2024)
[2025] KEHC 1217 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1217 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL REVISION E070 OF 2024
RB NGETICH, J
FEBRUARY 27, 2025**

BETWEEN

NYORU SIARENG APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant, Nyoru Siareng was charged with 7 counts of offences. Count 1 is the offence of being in Possession of a Firearm contrary to Section 4A (1) (a) of the *Firearms Act* Cap 41 Laws of Kenya.
The particulars of the charge were that the accused on the 4th day of June, 2021 at Kamurio village in Tiaty West Sub-County within Baringo County, was found in possession of a Firearm, AK 47 serial No.LK 1385 without a license or permit or other lawful justification from a licensing officer.
2. Count II is the offence of being in Possession of Ammunition without a Firearm certificate contrary to Section 4a (1) (b) of the *Firearms Amendment Act* No.6 of 2010.
The particulars of the charge were that the accused on the 4th day of June, 2021 at Kamurio village in Tiaty West Sub-County within Baringo County was found in possession of three rounds of ammunition of 7.62 mm Calibre without firearm certificate.
3. Count III is the offence of Threatening to kill contrary to Section 223(1) of the *Penal Code*.
The particulars being that the accused on dates between 4th June, 2021 to 15th June, 2021 at Kamurio village in Tiaty West Sub-County within Baringo County, without lawful excuse uttered the words, ‘I will kill you’ to Sadam Kalale Samali which were meant to cause fear to the said Sadam Kalale Samali.
4. In Count IV, the applicant was charges with the offence of Threatening to kill contrary to Section 223(1) of the *Penal Code*.



The particulars of the charge being that the accused on dates between 4th June,2021 to 15th June,2021 at Kamurio village in Tiaty West Sub-County within Baringo County, without lawful excuse uttered the words, “I will kill you” to Lopanga Loculiareng which were meant to cause fear to the said Lopanga Loculiareng.

5. Count V is offence of Threatening to kill contrary to Section 223(1) of the [Penal Code](#).

The particulars of the charge were that accused on dates between 4th June,2021 to 15th June,2021 at Kamurio village in Tiaty West Sub-County within Baringo County, without lawful excuse uttered the words, “I will kill you” to Pkioror Lokwiapong which were meant to cause fear to the said Pkioror Lokwiapong.

6. Count VI is the offence of Threatening to kill contrary to Section 223(1) of the [Penal Code](#).

The particulars of the charge were that accused on dates between 4th June, 2021 to 15th June, 2021 at Kamurio village in Tiaty West Sub-County within Baringo County, without lawful excuse uttered the words, “I will kill you” to Lori Kang’etet which were meant to cause fear to the said Lori Kang’etet.

7. Count VII is the offence of Threatening to kill contrary to Section 223(1) of the [Penal Code](#).

The particulars of the charge were that accused on dates between 4th June, 2021 to 15th June, 2021 at Kamurio village in Tiaty West Sub- County within Baringo County, without lawful excuse uttered the words, “I will kill you” to Lomelo Pkorkor Musa which were meant to cause fear to the said Lomelo Pkorkor Musa.

8. The accused denied all the charges and upon trial, the applicant was found guilty, convicted and sentenced to serve 7 years imprisonment in Count 1 and 5 years imprisonment in Count 2; the two sentences to run concurrently from the 23rd June,2021 when the accused person was placed in remand pending trial.

Application for Review of Sentence

9. The Applicant has now approached this court vide an undated application seeking for sentence review. The Applicant avers that he is not disputing the sentence but urges this court for reduction of the sentence to a lower term.
10. In his application, the applicant avers that he is seeking the indulgence of this Honourable court to reduce the 7 years sentence downwards to a lesser lenient term considering the mitigating circumstances of the case and recent decisions of the court. The applicant states that he is remorseful, a first offender entirely repentant, reformed and rehabilitated person and he has learn from the incarceration and the court should allow him play a role model in the society.
11. The Applicant mitigates that he has a family who dearly depend on him as the bread winner and now suffering a lot due to his imprisonment hence begs for leniency from this Honourable court.
12. When the matter came up for hearing on the 11th November 2024, the applicant informed the court that he prays for the reduction of the sentence. That he was jailed for 7 years for the offence of possession of firearm and he is now remaining with 1 year 4 months to serve. This court called for a social inquiry report which was filed as directed.

Social Inquiry Report

13. From the report, the applicant did not attend any formal education. He started herding family cattle and goats from teenage age and started a business of selling goats and cattle within the community. He



is married to three wives with 18 children from the 3 wives and 8 children are school going while ten other children are doing casual jobs within the community.

14. The applicant's son indicated that following arrest of his father they have suffered both emotionally and economically; that his siblings are not going to school due to absence of father figure within the family and their goats and cattle are being stolen by community members. He prayed for non-custodial sentence so that the father can continue with his parental responsibility. Efforts to reach out to applicant's wife proved futile but the grandparents confirmed that the children are suffering and prayed for early release but did not show any interest in facilitating re-integration and resettlement of the applicant. The Applicant still denies the charge; He alleges that he is not aware of AK47. He alleges that the chief framed him over land issue. Social inquiry however reveals that AK 47 belonged to the Applicant and has been using it to guard his brothers' animals.
15. local administration of Kapau and Ribkwo interviewed did not confirm whether the applicant reside in their locality and distanced themselves from making any comment concerning the applicant. The probation officer indicates that it may be difficult to supervise the applicant if placed on community-based rehabilitation and recommend that he completes his sentence.

Response from the State

16. On the 4th February, 2025 the prosecution counsel Ms. Bartilol submitted that the state is opposed to revision of sentence for the reason that the sentence imposed against the Applicant is proper in law and should not be interfered with. Further that the offence committed is serious especially in East Pokot where the accused is coming from as recently, lives have been lost through acts of people who are in possession of illegal firearms. She further submitted that the social inquiry report is negative and prayed that the application be dismissed.

Determination

17. I have considered the nature of the offence and sentiments given by people interviewed by the probation officer. The Court of Appeal, on its part, in *Bernard Kimani Gacheru v Republic* [2002] eKLR restated 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, that 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 feels that the sentence is heavy and that 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.”

18. Further, in the case of *Ogolla s/o Owuor v Republic*, [1954] EACA 270, pronounced itself on revision of sentence as follows: -

“The Court does not alter a sentence unless the trial Judge has acted upon wrong principles or overlooked some material factors.”



19. The other principle to be considered is whether the sentence is manifestly excessive in view of the circumstances of the case. In the case of *Shadrack Kipkoech Kogo v Republic* Eldoret Criminal Appeal No.253 of 2003 the Court of Appeal stated thus:-

“Sentence is essentially an exercise of discretion by the trial court and for this court to interfere it must be shown that in passing the sentence, the sentencing court took into account an irrelevant factor or that a wrong principle was applied or that short of these, the sentence itself is so excessive and therefore an error of principle must be interfered (see also *Sayeka – vs- R.* (1989 KLR 306).”

20. There is no doubt that the offence of being in possession of firearm is very serious especially in a region like East Pokot where many lives have been lost through the hands of people like the applicant who are illegally in possession of firearms. The applicant wants sentence to 7 years imprisonment to be reduced. The offence carries a maximum sentence of life imprisonment. considering the seriousness of the offence and its impact in East Pokot, the sentence imposed against the applicant is lenient in the circumstances. Further to the above, the local administrators interviewed did not confirm location of the applicant and are non-committal in review of his sentence. In view of the above, I am of the view that the applicant is not suitable for Community-Based Rehabilitation.

21. Final orders: -

Application for revision of sentence is hereby dismissed.

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

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RACHEL NGETICH

JUDGE

In the presence of:

Ms. Bartilol for State.

Applicant – present.

Court Assistants – Elvis/Momanyi.

