Kaibe v Republic (Miscellaneous Criminal Application E066 of 2024) [2025] KEHC 10131 (KLR) (30 June 2025) (Ruling)

Neutral citation: [2025] KEHC 10131 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT CHUKA

MISCELLANEOUS CRIMINAL APPLICATION E066 OF 2024

RL KORIR, J

JUNE 30, 2025

BETWEEN

DAVID MUTUMA KAIBE ..... APPLICANT

AND

REPUBLIC ..... RESPONDENT

RULING

1. The Applicant David Mutuma Kaibe was charged before the Chief Magistrate's Court with the offence of grievous harm contrary to Section 234 of the *Penal Code*. He was tried and convicted and sentenced to serve 5 years' imprisonment on 10th August, 2023 by Hon. Gandani Chief Magistrate.

2. Being aggrieved with the sentence, the Applicant filed the present Application seeking review of his sentence. He states that the trial court did not take into consideration that he had been in pre-trial custody for 11 months and that the said period should be deducted from his 5 year sentence.

   He relied on the case of Ahamad Alolfathi Mohammed and Another vis- Republic 2018 eKLR.

3. The Application is supported by the sworn affidavit of the Applicant. His averments mirror the grounds aforestated.

4. The Application is opposed by the Respondent. In Submissions dated 29th April 2025, the Respondents stated that the trial court took into consideration the mitigation and all relevant factors and exercised discretion in imposing the 5 years' sentence.

5. The Respondent urged that failure to explicitly mention the time spent in pre-trial custody did not render the sentence illegal. That the test was whether the sentence was excessive, unfair and unjust. They urged that the 5 year sentence was lenient as the sentence provided for under Section 234 of the *Penal Code* was life imprisonment. The Respondent cited the case of D.S.V Republic [2022] KEHC 2502.

6. The Applicant made oral submissions at the hearing on 30th April 2025. He submitted that his sentence should be reduced by the period he had spent in pre-trial custody from 13th September 2021 when he was charged to 10th August 2023 when he was sentenced.

Analysis and determination.

7. This court's revisionary jurisdiction is provided under Section 362 of the *Criminal Procedure Code*. The section provides:

> "362. The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court."

8. The trial was before the magistrate's court which entitles this court to review the sentence for legality and propriety. As required of me, I called for and examined the trial record.

9. The court in sentencing the then Accused stated that it had considered the pre-sentence reports and the same were not favourable. The court proceeded to sentence each Accused to 5 years' imprisonment. There was no mention by the court of the pre-trial detention already served by the Accused. In the case of DS .v. Republic [2022] KEHC 2502, the court held that:-

> "The Court of Appeal in Ahamad Abolfathi Mohammed & Another vs. Republic [2018] eKLR. (see also Bethwel Wilson Kibor vs. Republic [2009] eKLR) has also explained and buttressed the absolute need for the court to give real-time effect of Section 333(2) of the *Criminal Procedure Code* in sentencing. And, that merely stating that you have taken account of time spent in custody is not sufficient if the sentence does not show that the period which an accused has been held in custody prior to being sentenced had been taken into account.

10. Section 234 provides that any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.

11. I have looked at the trial proceedings and observe that the complainant in this case suffered extensive and deep panga cuts which were classified by the examining physician and documented in the P3 Form as grievous harm.

12. Looking at the sentence of 5 years against a possible maximum sentence of life imprisonment, I am persuaded that the said sentence shows that the court had taken into consideration the one year spent in pre-trial custody. I do not consider the sentence unfair or unjust. In the case of Benard Kimani Gacheru-v – Republic (2002) eKLR, the Court of Appeal held thus:-

> "It is 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 or not

sufficient grounds for interfering with the discretion of the trial court on sentence unless, any one of the matters already as is shown to exist."

13. Flowing from the above authority, I have found no reason or sufficient ground to interfere with the discretion of the trial court.

14. In the end, the Application lacks merit and is dismissed.

Orders accordingly.

RULING DELIVERED, DATED AND SIGNED AT CHUKA THIS 30TH DAY OF JUNE, 2025.

.....

R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of the Applicant acting in person and Ms Rukunga for State; Muriuki (Court Assistant).