



REPUBLIC OF KENYA



KENYA LAW
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**Chandi v Republic (Criminal Revision E1529 of 2024)
[2025] KEHC 12042 (KLR) (Crim) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 12042 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION E1529 OF 2024
AM MUTETI, J
JULY 31, 2025**

BETWEEN

ELISON MUTUNGATI SHEIKH CHANDI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant by way of a Notice of Motion dated 10th October 2024 moved this court under Section 333(2) of the Criminal Procedure Code seeking to have the court review the sentence imposed on him in Milimani Criminal Case No. E1366 of 2021 whereof the learned Honorable E. Kimilu senior Principal Magistrate upon convicting him on a plea of guilty for the offence of obtaining money by false pretenses contrary to Section 313 of the Penal Code sentenced him to serve a custodial sentence of 18 months and in addition ordered him to compensate the complainant in the sum of Kshs.2, 735,000 being the amount of money obtained from the complainant plus costs.
2. The applicant was ordered to pay the said sum within a period of 2 years from 2nd October 2023 failing which execution would issue.
3. The applicant argues that the trial court did not take into account the period he spent in custody before conviction and sentence which he claims to have been 16 months. ‘
4. The applicant also pleaded with the court to vacate the order for compensation terming it unconstitutional and oppressive.
5. The applicant has premised his application on the provisions of Section 333 (2) of the Criminal Procedure Code which provides:



- (2) Subject to the provisions of section 38 of the Penal Code (Cap 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code. Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.
6. The section requires a trial court to take into account the period spent by an accused person in custody before his conviction. That period is to be discounted from the period of imprisonment that a court considers appropriate in a particular case.
 7. The sentencing notes read: “ the upshot and the accused having admitted to the charge , I hereby sentence accused to serve 18 months custodial sentence. In addition, he compensates the complainant of all money received on diverse dates in false pretences that he was in a position to import him 5 motor vehicles which turned out to be fraud”. It is therefore clear from a reading of the sentencing notes that the trial court did not apply its mind to the provisions of Section 333(2) of the Criminal Procedure Code. It is however important to note that the case relevant to this revision was filed in court on 20th December 2021 and the matter was scheduled for plea on 20th December 2021 before the learned Honorable Micheni Wendi (CM) as she then was. However, in that day the accused person was absent and a production order was issues to have him arraigned on 21st December 2021. On 21st December 2021 the applicant was not produced and a mention was fixed on 27th December 2021.
 8. On 22nd December 2021, Mr. Gikunda prosecution counsel informed the learned Honorable magistrate that: “I have learned that the accused person was released from Industrial Area prison. The other matter is coming up on 3rd February 2022 I pray for a mention date then.” Mr. Gikunda informed the court that the case in which the applicant had been released was No. E2130 of 2019.
 9. Mr. Gikunda went further and applied for a warrant of arrest which was granted by the court and a mentioned date issued for 3rd February 2022.
 10. On 3rd February 2022 , the accused person was absent and a further mention was given for 5th April 2022 when he did not appear and the warrant of arrest was extended until 5th May 2022. The matter was mentioned on 5th of May 2022 and the accused is indicated to have been absent on that date and further mention on 30th May 2022 was fixed.
 11. The first time the accused is recorded as having been present was on 30th May and he informed the court on that date that: “we were not able to communicate with the complainant as she does not pick my calls also I was in remand”.
 12. The matter was then allocated to court No. 10 and a mention for 2nd of June 2022 was fixed but the accused person was not produced on that date. The case was adjourned to 2nd June 2022 when the accused appeared and it turned out that the accused person had 4 other cases and in all of them, he had been granted bond. However, he informed the court that in one of the cases, bond had been withdrawn and he was placed in custody.
 13. The accused therefore applied to be released on bond in the instant matter but the court declined for reasons stated in its ruling of 6th July 2022. The accused therefore remained in custody throughout the period of trial until the date of conviction and sentence.
 14. From the circumstances highlighted above it is clear that the applicant was entitled to a credit in sentencing in light of the provisions of Section 333 (2) of the Criminal Procedure Code.



15. His application therefore has merit on that score and is hereby allowed. The period of 18 months imprisonment shall be computed from 30th May 2022 when the applicant was remanded on the orders of the trial court in respect of this matter.
16. In regard to the issue of compensation, this court is not persuaded by the applicant's argument that an order for compensation is unconstitutional. It was the applicant's argument that under Article 50 (2) (b) of *the Constitution* the court ought not to have imposed an order for compensation having committed him to prison. The applicant cited Article 50(2)(o) and argued that the order by the learned trial court subjected him to double punishment which is unconstitutional.
17. The fairness in a trial is not a right that is exclusively reserved for the accused in a trial. The victims of crime also have rights that must be taken into account in the course of a trial. See *Waswa vs Republic* (Petition 23 of 2019) [2020] KESC 23 (KLR). The victim's rights are not lesser rights and must be respected and upheld. The right to restitution, compensation and reparations is recognized in statute and the courts must give effect to the same.
18. The Victims Protection Act was enacted following the promulgation of *the Constitution* of Kenya 2010.
19. The Act was intended to give victims of crime a voice in our justice system and have their rights protected just like the accused person's right. The Act engenders the transformative nature of our Constitution and anchors social justice as a pillar in our criminal justice system which for a long time concerned itself more with the rights of the accused declaring accused persons as the most favorite children of the law. The discourse has changed under the present constitutional dispensation.
20. The victim of a crime is entitled to an order for compensation and therefore any trial court making such an order would not in any way be acting contrary to *the Constitution*.
21. Section 23 of the Victims Protection Act provides;-

“ 23. Right to compensation

- (1) A victim has a right to restitution or compensation from the offender and the enforcement thereof in accordance with this Act.
- (2) Subject to any limitations and conditions set out in this Act, the victim has a right to compensation by the offender for—
 - (a) economic loss occasioned by the offence;
 - (b) loss of or damage to property;
 - (c) loss of user over the property;
 - (d) personal injury;
 - (e) costs of any medical or psychological treatment; and
 - (f) costs of necessary transportation and accommodation suffered or incurred as a result of an offence. 15CAP. 79A Victim Protection [Rev. 2022]
- (3) A victim has the right to restitution of any property or right to property of which the victim is deprived as a result of an offence in respect of which the victim is entitled to the rights and remedies specified in this Act.



- (4) A compensation order made against a convicted offender may be enforced as a judgment in civil proceedings." (emphasis mine).
22. . The Act makes it clear that where a person suffers the loss of property in the hands of an accused person, the trial court has the necessary jurisdiction to order restitution and or compensation.
23. . The offence of obtaining leads to the loss of money by the victim and therefore the victim is entitled to compensation. The order for compensation is in addition to any other punishment that the court may impose thus the complaint by the applicant that the trial court in the instant case erred is without merit.
24. The law recognizes that the court may impose an imprisonment term or even a fine before the making of an order for compensation.

The Victims Protection Act provides;-

“ 25. Compensation or restitution orders not part of a sentence

A compensation or restitution order made by a court against a convicted offender—

- (a) is in addition to any other sentence or order the court may make against a person;
- (b) is not, for any purpose, to be taken to be part of a sentence passed against the person and;
- (c) is not a bar to civil proceedings. (emphasis mine).

It is important to highlight here that the contention by the applicant that the imposition of a compensation order amounts to double punishment is not sustainable in the face of this express statutory provision. Parliament intended that, victims of crime be compensated and or restituted even as the offenders serve any other forms of sentence.

The statutory provisions must have been intended to cure the mischief of subjecting victims to the twin process of pursuing offenders in civil courts long after the criminal trial process is over which can at times prove to be very expensive and frustrating."

25. The statute was enacted against the backdrop of *the Constitution* of Kenya 2010 thus the same is constitutional and an improvement on the regime of law that existed prior to Constitution of Kenya 2010 where victims would benefit from restitution and compensation orders by courts applying the provisions of Sections 175 and 178 of the Criminal Procedure Code.
26. The order for compensation may include an order for costs incurred by the victim in the pursuit of justice. Section 24 of the Act provides;-

“ 24. Award of compensation by Court

The court may award compensation under this Act and such compensation may include financial compensation for expenses incurred as a result of the loss or injury resulting from the offence complained of which shall be charged from the Fund."



25. The court having made the order in this matter, the same is recoverable from the applicant as civil debt in the event he does not settle the same. This court has a duty to breathe life into all these provisions of the law which in my view give effect to the Victims right to property under Article 40 of the Constitution and his right to enjoy equal protection and equal benefit of the law under Article 27 of the Constitution.
26. The applicant having pleaded guilty to the charge he admitted receipt of the complainant's money thus the complainant was entitled to recover the same. The right to compensation and restitution has been with us all along and where it is clear that the issue of the property in issue is strictly between the complainant and the accused, courts must not hesitate from ordering restitution and or compensation. See *Kagiri v Republic* [1989] eKLR.
27. The upshot of the above is that an order for compensation does not constitute double punishment thus it does not violate the provisions of Article 50 of the Constitution.
28. The end result is that the application by the applicant is partially allowed to the extent that his sentence of 18 months imprisonment shall be computed from 30th May 2022 and the compensation order is upheld.
29. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 31ST DAY OF JULY 2025.

A. M. MUTETI.

JUDGE

In the presence of:

Court Assistant: Kiptoo

Applicant Present in person

Omondi for Respondent

