



**Okoth v Republic (Criminal Application E083 of 2025)  
[2025] KEHC 11862 (KLR) (6 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 11862 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL APPLICATION E083 OF 2025  
RN NYAKUNDI, J  
AUGUST 6, 2025**

**BETWEEN**

**ERIC ONYANGO OKOTH ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. What is pending before this court for determination is an application dated 3<sup>rd</sup> June 2025 where the Applicant is seeking the following orders:
  - a. That, this application is founded on principle of *Muruatetu*, paragraph 4:8:18 of the *sentencing policy guidelines 2023*, *Probation Act* section 4 & 26 (2) of *Penal Code* and all enabling laws.
  - b. That, the applicant is seeking for court orders to substitute his remaining sentence of 3 years with a non-custodial sentence of probation or otherwise.
  - c. That, the applicant is seeking for orders to substitute his remaining sentence of 3 years with a non-custodial sentence on account of new post sentence mitigation factors that have emerged after his incarceration.
  - d. That, the applicant is seeking for orders to substitute his remaining sentence of 3 years with a non-custodial sentence in accordance to progressive sentencing objective that are suitable and relevant to the changed circumstances of his case.
  - e. That, the applicant is seeking for any orders that the court may deem fit and just in the current circumstances of his case.
2. The Application is supported by the annexed affidavit sworn by the Applicant who avers as follows;



- a. That, I was charged with the offence of murder c/sec 203 as read with section 204 of the penal code, was convicted and sentenced to serve 12 years by High court at Eldoret by Hon. Justice Nyakundi that was delivered on 27<sup>th</sup> April 2025.
- b. That, the applicant has now filed this Miscellaneous Application seeking a re-sentence hearing for a substitution of his custodial with a non-custodial sentence based on the following grounds:
- c. That, Hon. Justice Nyakundi during the sentence hearing of the applicant Rightly invoked the Principle of Muruatetu by imposing a discretionary lenient sentence of 12 years and further reduced a period proportionate to period spent in pre-trial custody from the said sentence. The Prison Authority in accordance to rule 46 of the *Prison Act* cap 90 granted him a further reduction of sentence by 4 years. This leaves him with a period of 3 years to serve to completion of his sentence which I am urging the court to make a finding the period to be suitable for probation term.
- d. That, the applicant has cumulatively served a substantial part of his original sentence of 12 years and did not appeal the court's decision as a way of taking responsibility for his wrong doing after reflecting on it on his incarceration and is now remorseful, very sorry and deeply regrets his action.
- e. That, during his stay on bond he underwent a successfully heart surgery but his health has continued to deteriorate after becoming depressed on his incarceration. He seeks for a second chance to be resented to non-custodial on account of poor health.
- f. That, the applicant's ability to be genuinely reformed and rehabilitated is demonstrated by taking responsibility for the committed offence and he is ready to be re-integrated back to the community. He took advantage of his stay on bond to re-establish the relationship with the family that was affected with his crime. The pre-sentence report on his sentencing was positive.
- g. That, the applicant is seeking for a shift to reintegration and reconciliation objectives/approach Since he has been deterred, punished and corrected by the 12 years' custodial sentence. He is praying to the court to re-sentence him under section 26 (2) of the *PC* by imposing a non-custodial sentence on probation under section 4 of the probation Act on the remainder of his sentence.
- h. That, the applicant is seeking for any other orders that the Honorable court may find suitable and just in the circumstances of his case-consider the time already served to be sufficient punishment.
- i. That, what I have deponed herein is true to the best of my knowledge, information and belief.

### **Analysis and Determination**

3. This court can only review sentence within the set threshold if the sentence is manifestly excessive, illegal or base on a wrong principle see the principles of in the case of *Ogalo s/o Owuora v Republic* [1954] 21 EACA 270 as follows:

“... The court does not alter a sentence on the mere ground than if the member of the court had been trying the appellant, they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial judge unless as was said in *James v Republic* [1950] 18 EACA 147, it is evident that the judge has acted upon



some wrong principle or overlooked some material factor. To this we would also add a third criterion namely that the sentence is manifestly excessive in view of the circumstances of the case.” See also *Bernard Gacheru v Republic* [2002] eKLR.

4. The passing of sentence by a judge/magistrate on a convicted offender comprises the most public stage of the criminal justice process, but how do judges go about this task? In particular, how does the judge arrive at a sentence that adequately reflects the seriousness of the crime and the circumstances of the individual offender whilst still taking account of the interests of society? I am always of the considered that justice is best served in sentencing by an approach that achieves individualization of facts and circumstances which guide the courts in exercising judicial discretion on the fair and proportionate sentence for the offence. The applicant has not told this court that the sentence imposed is disproportionate to the seriousness of the offence. Sentencing as undertaken by the various judges/magistrates across the country is not a mathematical exercise but it is an act of balancing many different and conflicting factors to individualize a particular sentence to a particular offender.
5. From the facts of this case there are no compelling or substantial circumstances to exercise the review jurisdiction over the sentence imposed by the trial court as requested for by the applicant. This application is dismissed under section 382 of the [CPC](#).

**GIVEN UNDER MY HAND AND SEAL OF THE COURT AND PUBLISHED VIA CTS AT  
ELDORET THIS 6<sup>TH</sup> AUGUST 2025**

.....

**R. NYAKUNDI**

**JUDGE**

