



REPUBLIC OF KENYA



Kipserem alias Obed Kipkpsgei Sigei v Republic (Criminal Revision E119 of 2025) [2025] KEHC 11645 (KLR) (4 August 2025) (Ruling)

Neutral citation: [2025] KEHC 11645 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E119 OF 2025
RN NYAKUNDI, J
AUGUST 4, 2025**

BETWEEN

JACOB KIMELI KIPSEREM ALIAS OBED KIPKPSGEI SIGEI APPLICANT

AND

REPUBLIC RESPONDENT

(Being a Revision from Judgement Delivered by Hon. Mogire (SPM) dated 26.3. 2025)

RULING

1. The Applicant herein was charged with the offence of obtaining money by false pretence contrary to section 313 of the *Penal Code*. The brief facts are that the Applicant on the 3rd day of November 2021 and 3rd December 2021 at Eldoret town in Turbo sub county within Uasin Gishu county, jointly with others not before court with intent to defraud obtained from Shadrack Kibungei Soribit the sum of Kshs. 960,000/= by falsely pretending that he was in a position to recruit his sons to Kenya Defense Forces.
2. He pleaded guilty to the offence, was convicted and sentenced to 2 years' imprisonment. He has now applied for his sentence to be reviewed and the remainder of the sentence of 12 months' probation at Sigowet primary under the supervision of the head teacher.

Decision

3. The legal spectrum of this application is based on the provisions of the criminal procedure code namely Section 357, 362, 364 as read with 382. *The constitution* also provides under Art 50 [2] [p] [q] as follows:

[p] to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishments for the offence has been changed between the time that the offence was committed and the time of sentencing; and



- [q] if convicted, to appeal to, or apply for review by, a higher court as prescribed by law.
- [3] if this Article requires information to be given to a person, the information shall be given in language that the person understands.

4. The same constitution in Art 50 [6] [a] [b] expressly states as follows:

A person who is convicted of a criminal offence may petition the High Court for a new trial if-

- a. The person's appeal, if any, has been dismissed by the highest court to which the person is entitled to appeal, or the person did not appeal within the time allowed for appeal; and
- b. new and compelling evidence has become available.

Section 362 of the CPC provides;

The High court may call 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.

Section 364 [1] of the CPC provides;-

In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders or which otherwise comes to his knowledge, the High Court may"-

- a. In the case of a conviction, exercise any of the powers conferred on it as a court of appeal by section 354, 357 and 358 and may enhance sentence;
- b. In the case of any other than an order of acquittal alters or reverse the order

5. The court in Joseph Nduvi Mbuvi v Republic [2019] eKLR stated as follows:

"In my consideration view, the object of the revisionary jurisdiction of the High Court is to enable the High Court in appropriate cases, whether during the pendency of the proceedings in the subordinate court or at the conclusion of the proceedings to correct manifest irregularities or illegalities and give appropriate directions on the manner in which the trial, if still going, should be proceed with. In other words, the High Court's revisionary jurisdiction includes ensuring that where the proceeding in the lower court has been legally derailed, necessary directions are given to bring the same back on track so that the trial proceeds towards its intended destination without hitches. Not only is the jurisdiction exercisable where the subordinate court has made a finding, sentence or order but goes on to state that it is also exercisable to determine the regularity of any proceedings of any such subordinate court as well."

6. This application is based on the Sentence Review Report dated 21st July 2025 carried out by the probation officer which contextualized the issues as follows: Sources of information prison records, inmate families, community and the complainant



Current Family And Personal History

The inmate before court is the son of one Joseph Kipserem and one Sarah Kipserem of Muserech area, Eldama Ravine in Baringo County. He is the third-born in a family of eight children, who are all adults leading independent lives. The family enjoys cordial ties. There is no history of criminality in the family. The inmate was born in 1988 in Eldama Ravine, upon attaining school going age, he was enrolled to Seguton primary school. He thereafter proceeded to Baringo High School for his secondary education. He did not join college due to lack of school fees. The inmate is married to one Diana Chepkoech with whom they have sired two children. The first child Aurel Cheruto is a grade three learner and the second, Briming Kibet is in play group. Before his arrest and incarceration, the inmate was living in Annex area where he worked as a bar attendant.

Prison Assessment Rehabilitation And Re-intergration

During his time in prison, the offender has shown a positive attitude towards rehabilitation. He has actively engaged in vegetable growing. The inmate states that he has undergone personal transformation. Upon his release, he plans to return to his parents' homestead where he has a house in Timboroa. The prison authorities regard him well and recommend his early release.

Offenders' Attitude Towards Non-custodial Sentence:

The offender accepts the non-custodial sentence and is willing to work without pay.

Conclusion

Your Lordship, the inmate before court is a 37 years old man who was sentenced for two years for the offence of obtaining money by false pretense. He has undergone rehabilitation and the prison authorities regard him well. The inmate has acquired vegetable farming skills which he hopes to make living from upon release. He has a supportive family that is willing help in the reintegration of the inmate to the community.

Recommendation

Considering the above, I recommend that he be placed on community service order [CSO] for the remaining period of his sentence [12months] at Sigowet primary under the supervision of the head teacher/teacher on duty.

7. The role of non-custodial sentence should underpin our penal system in which custodial sentence remains a recourse of last resort in punishing offenders. The sentence policy guidelines of the judiciary 2023 provides a framework in which Judicial discretion should be exercised to arrive at a fair and proportionate sentence on individualized circumstances. The objectives and principles of sentencing are well articulated and defined as follows:
 - a. Retribution: to punish the offender for his/her criminal conduct in a just manner.
 - b. Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
 - c. Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law-abiding person.
 - d. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.
 - e. Community protection: to protect the community by incapacitating the offender.



- f. Denunciation: to communicate the community's condemnation of the criminal conduct.
 - g. Reconciliation: To mend the relationship between the offender, the victim and the community.
 - h. Reintegration: To facilitate the re-entry of the offender into the society.
8. In a documented research by Chrispinus Adenya Aben titled; Factors Influencing Success of Non-Custodial Sentence in Kenya: A Case of Kilifi District in Kilifi County 2011 he made the following observations: First and foremost, prison population around the world is increasingly placing enormous financial burdens on governments. There is growing recognition that imprisonment does not achieve some of its most important stated objectives, as well as being harmful to offenders, families and in the long term to the community [UNODC, 2006].
 9. It came out clearly from his research; Supervision is an essential component of community based correction with the primary objective of enforcing compliance with the conditions of release to minimize risk to the public and to re-integrate the offender into the law abiding lifestyle. Lax supervision and failure to deal firmly with those who persistently violate the terms of release can bring an entire system into disrepute in criminal justice. [Killinger GG and Cromwell P.F, 1990]. "The law is without doubt a remedy for great evils, yet it brings with it evils of its own". [Subbrano V.C.G. 1993]. There are three primary gateways in the criminal justice. The first is at the police at the initial stage of apprehension, the second is at the court after the determination of guilt and passing of a sentence and the third is the gateway to the community at the conclusion of the sentence [Johnson R, 2003].
 10. Rule 8.2 of the Tokyo rules on non-custodial affirm that courts or sentencing authorities may dispose off cases in any of the following ways-verbal sanctions, admonitions, reprimands and warning, conditional discharge, status penalty, economic sanctions and monetary restitution, restitution to the victim or compensation order, confiscation or expropriation, suspended or deferred sentence, probation and judicial supervision, community service order, house arrest and any other non-institutional treatment. Supervision is critical in realization of sentencing objectives. This is operationalized as poor and lax supervision leads to reconviction and abscondism. The quality and number of contacts between the offender are key in reforming, re-integrating the offender. The caseload per officer and the frequency of contacts between the officer and the probationer determines the level of intensity of supervision based on the risk category of the probationer. The community plays key role in having offenders change. Community attitude, home environment is deterministic of offender's potential to change.
 11. Time has come to re-conceptualize the effectiveness of custodial sentencing to promote a clear, fair, uniform and consistent approach by all levels of courts. A theme of any review of sentence must not lose sight of the objectives and sentencing. Am of the consider view that an effective sentence must also serve to communicate to society that justice has been done and the wrong doer punished and denounced for his or her conduct. Generally speaking, over time I have been involved in the practice of law as a trier of criminal cases, and there is no probative evidence that harsher, punitive, or more severe sentences provide greater marginal deterrent effects.
 12. Sentencing is a discretionary process mainly exercised by trial courts who have the advantage to appreciate the circumstances of the offence and how it applies to the sentencing objectives and principles within the regulatory framework of our sentencing policy guideline 2023. This court is being asked to review the custodial sentence and have it substituted with non-custodial sentence. As I appreciate the record and the impugned decision on sentence I bear in mind that this is one area of law which involves the weighing of may complex factors, it will always be possible to point to some



factors which should arguably have been taken into account or left out of account; even if they should have been, the court should not intervene unless it is convinced that this would have resulted in the decision going the other way.

13. There is a big outcry amongst our communities and society at large on the level of inconsistency, disparity, unfairness, and disproportionate verdicts on sentence being imposed by the trial courts and on even on appeal which do not reflect the sentencing objectives and principles in our policy document. As if that is not enough the letter and spirit of our sentencing scheme seems to depart from the legislature's intention and vision in the criminal administration of justice. Sentencing in Kenya ought to be fair and proportionate to the crime being prosecuted by the state as against the accused persons or defendant. These canons on fair and proportionate sentence requires that:
- a. All relevant factors of a case must be considered including the seriousness of the offence, the impact on the victim and others affected by the case, and the circumstances of the offender;
 - b. Sentences should be no more severe than is necessary to achieve the appropriate purposes of sentencing in each case;
 - c. Reasons for sentencing decisions must be stated as clearly and openly as circumstances permit;
 - d. Sentencing decisions must be made lawfully and sentencers must have regard to any sentencing guidelines which are applicable;
 - e. People should be treated equally, without discrimination; and
 - f. Sentencing decisions should treat similar cases in a similar way, assisting consistency and predictability
14. It is the law in Kenya that the sentence is the judgment of the trial court after conviction of an offender and it flows from the prescription of the legislature as to the nature of the sanctions to be imposed. In the context of the CPC as read with section 28 of the penal code, sentence could be custodial or non-custodial. The Tokyo Rules under Art 2 [5] [6] of *the constitution* forms part of our international law capable of being applied in the decision making process on sentencing. In this respect the criteria that must be taken into account in the use of non-custodial measures include:
- a. The nature and gravity of the offence;
 - b. The personality and background of the offender;
 - c. The protection of society;
 - d. The avoidance of "unnecessary use of imprisonment"
 - e. The purposes of sentencing; and
 - f. The rights of victims of crime.
15. In so far as this application is concerned, I am privy to the probation officer's report and given the provisions of sections 362 & 364 of the CPC, the court has powers to exercise discretion to review a custodial sentence and have it substituted with that of non-custodial. With regard to the facts of this case, the applicant is placed on community service order at Sigowet primary for a period of 12 months'.

DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 4TH AUGUST 2025

R. NYAKUNDI

JUDGE

