



**Kigen v Republic (Criminal Petition E084 of 2025)
[2025] KEHC 12471 (KLR) (8 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12471 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL PETITION E084 OF 2025
RN NYAKUNDI, J
SEPTEMBER 8, 2025**

BETWEEN

KENNETH KIPLIMO KIGEN PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. Before this court is an application dated 26th day of May 2025 where the Applicant is seeking the following orders:
 - a. That the petition is founded under Article 50(2) (p) (q) Section for orders for enforcement for a review of his sentence under Section 362 & 364 and in reliance to Article 50(2) (p) (q) of the [Constitution](#) of Kenya and the [Sentencing Guidelines 2023](#).
 - b. That the petitioner is seeking for orders for a reduction of his sentence on time spent in remand custody under Section 333(2) of the CPC cap 75 and the [Sentence Policy Guidelines 2023](#).
 - c. That the petitioner is seeking for orders for his sentence to commence from the time he was placed in pre-trial custody on 29th May 2024 or reduce a period proportionate to 4 months 29 days.
 - d. That the petitioner is seeking for orders to be made and declare Section 389 contradicts Section 220(a) of the [Penal Code](#) and violates his right to a fair hearing for imposition of the least severe sentence under Article 50(2) (p) (q) of the [Constitution](#) of Kenya.
 - e. That the petitioner is seeking for orders to be made to substitute his sentence of 21 years with a sentence of less than 7 years based on Section 389 of the [Penal Code](#).
 - f. That the petitioner is seeking for any orders that the court may deem fit and just in the current circumstances of his case.



- g. That Applicant is praying to be present during the determination of this application.
2. The Application is supported by the annexed affidavit sworn by the Applicant who deponed as follows:
- a. That I was charged with the offence of attempted murder contrary to Section 220 (a) No. 3 of the Penal Code was convicted and sentenced to serve 21 years by CM’s court at Eldoret that was delivered on 19th November 2024.
- b. That the petitioner did not file an appeal but has instead filed this criminal petition for redress/relief on prayers enumerated in the notice of motion on the following grounds:
- a. That Hon. Magistrate did not order the time spent in remand custody to be factored in determining his sentence of 21 years. The committal warrant indicated that sentence to commence on date of conviction on 19th November 2024 instead of my arrest date on 29th May 2024.
- b. That the petitioner was not admitted on bail/bond and was in pre-trial custody the entire period of his trial and pray for reduction of his sentence under section 333(2) of CPC by a period proportionate to 4 months 29 days or alternatively order for his sentence to commence from his date of arrest on 29/05/2025.
- c. That Section 389 of the penal code requires the court to impose a sentence not exceeding 7 years. The sentence of 21 years imposed is excessive and violates his rights to a least severe sentence under Art 50(2) (p) (q) of the Constitution of Kenya. There are two sentences for the offence I was charged with section 389 less than 7 years and 220 maximum of life imprisonment. To remedy this violation, the Constitution being the superior law under Art 2 section 389 be applied to his case and a sentence less than 7 years be imposed.
- d. That the petitioner is seeking for any other orders that the honorable court may find suitable and just in the circumstances of his case. The petitioner has genuinely reformed and is ready to be re-integrated back to community when his wife forgives him in the near future which I am still working on. He has taken responsibility of his unlawful act by not appealing the decision and believe his wife would forgive him and the court consider shifting from his deterrent sentence to objectives of reconciliation and reintegration on his sentencing hopefully before the court rules on his petition.

Decision

3. The application is based on the provisions of Article 50 (2) (p) (q) of the Constitution and Section 362 of the Criminal Procedure Code. For this court to review the sentence of 2 years’ imprisonment, it is to be guided by the following principles in the following cases: *Mokela v The State* (135/11) (2011) ZASCA 166; Thus:

“It is well-established that sentencing remains pre-eminently within the discretion of the sentencing court. This salutary principle implies that the appeal court does not enjoy carte blanche to interfere with sentences which have been properly imposed by a sentencing court. In my view, this includes the terms and conditions imposed by a sentencing court on how or when the sentence is to be served.”



4. Similarly, in *Ogolla s/o Owuor v Republic* [1954] EACA 270 it was stated that:

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

5. It is also important to bear in mind the seriousness of the offence and the importance of ensuring that in giving due allowance to subjective factors, always the punishment should fit the crime. That hurdle is yet to be surmounted by the applicant for this court to review the sentence downwards in the matter before me. There is no manifest error on the face of the record with regard to sentence which resulted in a miscarriage of justice. In light of the foregoing, the application be and is hereby dismissed under Section 382 of the Criminal Procedure Code. It is so ordered

DATED, SIGNED AND DELIVERED AT ELDORET THIS 8TH DAY OF SEPTEMBER 2025.

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R. NYAKUNDI

JUDGE

