



**Nyongesa v Republic (Miscellaneous Criminal Application
E115 of 2024) [2025] KEHC 12503 (KLR) (8 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12503 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CRIMINAL APPLICATION E115 OF 2024
RN NYAKUNDI, J
SEPTEMBER 8, 2025**

BETWEEN

COLLINS WAMALWA NYONGESA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this court for determination is an application dated 14th day of October 2024 where the applicant is seeking the following orders:
 - a. That the applicant is seeking for sentence review under Article 50(2) (p) (q) of the Constitution of Kenya 2010 in reliance 4(1) (a) (b) of the Probation Offenders Act Cap 64 of Kenya.
 - b. That any fee towards this application to be waived as the Applicant is held in prison.
2. The application is supported by the affidavit sworn by the applicant stating as follows;
 - a. That I was arrested and charged for the offence of grievous harm contrary to Section 234 of the penal code and was imprisoned to serve 5 years by CM's court Eldoret law court.
 - b. That I do not appeal against the same but pray for leniency
 - c. That I am first offender
 - d. That I am reformed, repentant and remorseful
 - e. That I have a surgery scar in my stomach that needs careful handling as it keeps reacting to prison food
 - f. That I am humbly pray that may this honorable court grant me a non-custodial sentence
 - g. That it is my humble prayer that I be granted a fair opportunity to argue my application



- h. That I wish to be present during the hearing and determination of this application.

Decision

3. The applicant was tried found guilty, convicted and sentenced for the offence to serve five years' imprisonment. He now seeks this sentence to be reviewed and to be substituted with a noncustodial sentence. In our Penal Code, grievous harm attracts a sentence of life imprisonment on conviction of an offender.
4. The plea by the applicant to have him released before completion of sentence is based on the grounds on the affidavit which on emphasis focus on the aspect of him being a first offender, having reformed, repentant and remorseful and finally that he has a surgical scar at the stomach which is sensitive to the food served in the prison.
5. The question is whether these pleas meet the criteria for review of sentence set out in *Bernard Kimani Gacheru vs. Republic* [2002] eKLR restated that:

“It is now 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 are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already states is shown to exist.”

6. In practice, however, serious offences are still likely to attract long and immediate imprisonment, even in the presence of strong mitigating factors:

“Some crimes are so heinous that a plea of youth, a plea that the crime was a first offence or that the offender has never been in prison before is irrelevant. Those who participate in such crimes should know that they will be subjected to long and immediate imprisonment, though they are young, even if they were neither young nor infirm. Courts will not readily accede to pleas of guilty or the age of the defendant where the offences are very serious and committed in the most austere of circumstances.”

7. The specific aspect of sentencing is that it deals with people and not merely the crime in question. Indeed, it is the real person before the court who must be taken into account; therefore, each sentence under review must not only reflect the gravity of the crime but also the circumstances of the individual who committed it. This Court has examined and reviewed the record of the trial court, and the offence in question as set out by the applicant, falls into the category of serious felonies. There is no evidence on record that the applicant has even on the basis of restorative justice, attempted to approach the victim of the offence or made any efforts under the umbrella of victim-offender mediation. There is therefore no demonstration of true remorse or regret for the offence. As for the three mitigatory factors raised and guided by the Sentencing Policy Guidelines of the Judiciary as well as judicial precedents, they carry no sufficient weight to warrant this Court's exercise of its revisionary jurisdiction. Accordingly, the application is dismissed under Section 382 of the Criminal Procedure Code.

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



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R. NYAKUNDI

JUDGE

