

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ELDORET**  
**MISC CRIMINAL APPEAL NO. 31 OF 2016**

**KIPKIYEN ARUSEI YEGO.....**  
**APPLICANT**

**VERSUS**

**REPUBLIC.....**  
**.....RESPONDENT**

**Coram: Before Justice R. Nyakundi**  
**M/s Sidi for the State**  
**Kipkiyen Arusei Yego the Applicant**

**RULING**

1. Before this court is an application dated 25<sup>th</sup> day of February 2016 seeking the order that the Applicant be allowed leave to appeal out of time.
2. The Application is made on the following grounds on the face of it among others in which the Applicant states as follows;
  - a. *That your honor I was convicted and sentenced to serve 10 years' imprisonment.*
  - b. *That your honor I pray the reduction of the sentence under section 26 of the penal code*
3. The Application is supported by the annexed affidavit sworn by the Applicant who avers as follows;
  - a. *That I am a male adult of sound of mind hence competent to swear this affidavit.*
  - b. *That I am the accused person in criminal case no. 2216 of 2014 in the Principal Magistrate's Court at Kapsabet.*
  - c. *That I humbly request to be allowed to appeal out of time.*

- d. That I appellant shall deem appropriate to be heard and be determined for the purpose of the prayers indicated.*
- e. That I humbly pray and look forward to this honorable court to consider my prayers.*

## **Decision**

4. In re-hearing the sentence verdict as petitioned by the applicant the following factors are of significance as develop by the Supreme Court in the case of **Muruatetu & Another v Republic Katiba institute & 4 others (Amicus Curiae) (Petition 15 &16 of 2015) [2021] KESC 31 (KLR)** held as follows:

- a) Age of the offender
  - b) Being a first offender
  - c) Whether the offender pleaded guilty
  - d) Character and record of the offender
  - e) Commission of the offence in response to gender based violence
  - f) The manner in which the offence was committed on the victim
  - g) The physical and physiological effect of the offence on the victim's family
  - h) Remorsefulness of the offender
  - i) The possibility of reform and social re-adaptation of the offender
  - j) Any other factor that the court considers relevant
5. For this court to review the sentence it must be guided by the principles in **Thomas Mwambu Wenyi vs Republic (2017) eKLR** cited the decision of the Supreme court of India in **Alister Anthony Pereira vs State of Maharestra** where the court held the following on sentencing:
- "Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done.*

*There is no straight jacket formula for sentencing an accused person on proof of crime. The courts have evolved certain principles: twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstance of each case and the courts must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. The principle proportionality in sentencing a crime doer is well entrenched criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence determination of sentencing the crime doer. The court has to take consideration all aspects including social interest consciousness of the society for award of appropriate sentence."*

6. I have read the record presented before this court and the yardstick in Article 50 (6) (a & b) of the Constitution 2010 as read with section 362 and 364 of the Criminal Procedure Code to review the sentence has not been met. The application is therefore dismissed under Section 382 of the Criminal Procedure Code.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 13<sup>TH</sup> AUGUST  
2025**

.....  
**R. NYAKUNDI  
JUDGE**