



**Republic v Waithaka (Criminal Revision E224 of 2022)
[2024] KEHC 14626 (KLR) (30 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 14626 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL REVISION E224 OF 2022
DO CHEPKWONY, J
OCTOBER 30, 2024**

BETWEEN

THE REPUBLIC PROSECUTOR

AND

PATRICK NGIGE WAITHAKA APPLICANT

RULING

1. The Applicant filed the Notice of Motion application dated 15th September, 2022 seeking various orders among them
 - a. That this application may be considered on a clemency basis in view of time already served as well as time spent in remand custody before conviction.
 - b. That may it please the court to take into a meaningful consideration the time already spent during sentence in view of the rehabilitation process and rehabilitation course already undertaken.
 - c. That this application is seeking Habeas Corpus upon the Applicant for the hearing and determination of this matter.
 - d. That it may be please the court to take into a meaningful account, the time spent in remand custody pending the conclusion of the lower court case as per Section 333(2) of the *Criminal Procedure Code*.
 - e. That may it please the court to substitute the remainder of the custodial sentence with a non-custodial one guided by pre- sentence report.
 - f. That this application is grounded on the Affidavit of Patrick Ngige Waithaka.



2. In response, M/S Ndeda counsel for the Respondent/State indicated that the State was not opposed to the Applicant's application. That having examined the record in the original record of proceedings, she established that the offence the applicant was convicted for attracts a minimum sentence of three(3) years and yet the Applicant was sentenced to serve four(4) years imprisonment by the trial court which was unlawful.
3. In its Ruling delivered on 14th August, 2024 this Court made a determination on the application in which it found the sentence meted against the Applicant was not unlawful. The court then called for the Probation and After Care Services to conduct a social inquiry on the Applicant and a report be filed in court to guide it on whether to substitute the remainder of the sentence with an alternative sentence. The court notes that the Report was filed on 19th September, 2024.
4. Having read through the social inquiry report on the Applicant, the same has captured the family background of the Applicant, his personal history, circumstances of the offence, attitude towards the offence, victim's family concerns, community attitude towards the offender and offence in making its conclusion and recommendations.
5. On the family background, it is stated that the Applicant has a cordial relationship with his family and they pray that the Applicant be given a lesser or non-custodial sentence so that he can be rehabilitated back into his family. The Applicant is said to be remorseful for the offence and promises not to reoffend once released. On the part of the community, the Local Administrator in Kagwe confirmed that he knows the Applicant and his family well and that he has never been in conflict with the law before. It is indicated that for the period he has been in prison, the Applicant has portrayed a high level of discipline and he has done a course in tailoring up to grade III, which works he does in prison. It is further reported that the Applicant has also gone through a program of '*safari ya mfungwa*' and has done a Certificate in 'Every man is a Warrior up to Group Two.'
6. In conclusion, the Probation Officer has reported that the Applicant is a 34 year old, husband and father of one child . That he is remorseful for the offence and has urged the court to consider the time he has spent in prison and commit him to non-custodial sentence. It is also reported that the Applicant believes that he has been rehabilitated while in prison and will be an asset to the community going forward. Further, the Probation Officer reports that the Applicant's family is supportive and willing to welcome him once he is released, and so does the Local Administration who confirm knowing the Applicant to be a law abiding citizen.
7. The Recommendation of the probation officer is that the Applicant can benefit from community service orders which will help him serve the community while taking care of his wife and child. It is proposed that he be committed to Limuru Probation Office.
8. Having gone through the application and the Probation and After Care Services Report, it is clear that the same is favorable towards the Applicant. Under Section 24 of the [Penal Code](#) Cap 63 Laws of Kenya, this Court is clothed with the power to impose different punishments to offenders as follows:-

The following punishments may be inflicted by a court—

- a. death;
- b. imprisonment or, where the court so determines under the [Community Service Orders Act](#) (Cap. 93), community service under a community service order;
- c. detention under the Detention Camps Act;
- d. (d) deleted by Act No. 5 of 2003, s. 3;



- e. fine;
 - f. forfeiture;
 - g. payment of compensation;
 - h. finding security to keep the peace and be of good behavior;
 - i. any other punishment provided by this Code or by any other Act.
9. Having already addressed itself in the previous Ruling that it cannot substitute the imprisonment sentence with a fine, this Court finds that the punishment of Community Service is favorable for the Applicant as it shall be in line with the principles of achieving rehabilitation from sentencing. The court thus proceeds to allow the application in terms of prayer No.(5) and substitutes the remainder of the sentence with a Community Service Order. The Applicant is hereby committed to serve on Community Service for the remainder period of his sentence under Limuru Probation Services.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 30TH DAY OF OCTOBER , 2024.

D. O. CHEPKWONY

JUDGE

In the presence of:

Mr. Ndeda counsel for the Respondent/State

Applicant in person – present at Naivasha Medium Prison

Court Assistant - Martin

