



**Hola v Republic (Miscellaneous Criminal Application E083 of 2024)
[2024] KEHC 14575 (KLR) (22 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14575 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
MISCELLANEOUS CRIMINAL APPLICATION E083 OF 2024**

**DK KEMEL, J
NOVEMBER 22, 2024**

BETWEEN

JOSEPH ODUOR HOLA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein Joseph Oduor Hola has filed an application dated 6/8/2024 seeking that his sentence be reviewed and substituted with a probation order or a reasonable fine be paid.
2. The Applicant’s gravamen is that he has been ordered to serve two years’ imprisonment vide Siaya CM Criminal Case No. E576 of 2023. That he is an employee of the County Government of Siaya as a driver and that he is likely to lose his job. That he is a first offender and that he has already learnt his lesson and that he will not repeat the mistake again.
3. The Respondent did not file response or any submission to the application.
4. I have given due consideration to the application. It is not in dispute that the matter emanated from the Applicant’s refusal to allow the complainant vacant possession of land parcel situate in East Alego (Bar Agulu) and in which the Applicant is alleged to have acquired a fake title to the said land yet the complainant has his title to the land. It is also not in dispute that this court called for a sentence review from the County Probation Officer. The same is dated 25/9/2024.
5. I have noted the contents of the said sentence review report dated 25/9/2024 and find that the Applicant merits a non-custodial sentence. The offence with which the Applicant was charged comprise of trespass as well as forcible detainer which attract less severe sentences since they are misdemeanors. As the court had called for a sentence review as part of its duties to decongest the prisons and which is favourable to the Applicant, i am persuaded by the recommendations by the Probation



officer that the Applicant merits non-custodial sentence in this matter. Suffice to add that the Applicant is a first offender and that he has already learn some vital lessons while serving the custodial sentence.

6. In the result, the Applicant's application dated 6/8/2024 has merit. The same is allowed. The sentence imposed by the trial court is hereby set aside and substituted with an order that the Applicant serves the remainder of the sentence under Probation. It is further ordered that in the event of non-adherence with any of the probation conditions, the probation order shall stand cancelled and that he shall be ordered to serve custodial sentence regardless of the period that has been served under probation.

DATED AND DELIVERED AT SIAYA THIS 22ND DAY OF NOVEMBER, 2024.

D. KEMEI

JUDGE

In the presence of

Joseph Oduor Hola.....Applicant

M/s Kerubo.....for Respondent

Ogendo.....Court Assistant

