



REPUBLIC OF KENYA



**Kipruto v Republic (Criminal Revision E443 of 2024)
[2024] KEHC 16378 (KLR) (23 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16378 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E443 OF 2024
RN NYAKUNDI, J
DECEMBER 23, 2024**

BETWEEN

TITUS KIPRONO KIPRUTO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of creating disturbance in a manner likely to cause a breach of the peace contrary to section 95(1)(b) of the *Penal Code*. The particulars of the offence are that on 6th July, 2024 around 2300hrs at Sanduku village in Moiben Sub-County within Uasin Gishu County, created disturbance in a manner likely to cause a breach of the peace by shouting on top of his voice and kicking the house door of Sammy Komen while being armed with a slasher.
2. The applicant pleaded guilty to the offence before and as a consequence, he was convicted on his own plea of guilty and sentenced to serve 5 months in prison.
3. The applicant has approached this court pursuant to sections 357, 362, 364 & 382 of the *Criminal Procedure Code* as construed with Article 50(2) (p) & (q) as conjunctively read with Article 50(6) (a) & (b) of the *Constitution*.
4. According to the applicant, the sentence imposed not lenient. He seeks a review to a non-custodial sentence.
5. In determining whether to impose a custodial or non-custodial sentence, the court is required to take into account the following factors: -
 - a) Gravity of the offence: - sentence of imprisonment should be avoided for misdemeanour.
 - b) Criminal history of the offender. Taking into account the seriousness of the offences, first offenders should be considered for non-custodial sentence.



- c) Character of the offender: - non-custodial sentence are best suited for offenders who are already remorseful and receptive to rehabilitative measures.
 - d) Protection of the community: - where the offender is likely to pose a threat to the community.
 - e) Offender's responsibility to third parties: - where there are people depending on the offender.
6. The nucleus of any correctional system is its rehabilitative and reparative functions and in the famous words of Lord Hewart, Justice must not only be done, but must also be seen to be done". This dictum was laid down in the case of *Rex v Sussex Justices*, [1924] 1 KB 256. The empirical evidence in this matter shows that the offender has been rehabilitated and is reformed, ready for re-integration into the society.
7. Upon careful examination of the record and the gravity of the offense, I find that this being a misdemeanor, the continued incarceration of the applicant would be disproportionate. The applicant has already served three months in custody for what is essentially a minor offense, creating disturbance by shouting and kicking a door. While such conduct is undoubtedly disruptive to public order, the principles of proportionality dictate that a misdemeanor should not ordinarily attract a lengthy custodial sentence. Taking these factors into consideration, I find it both just and appropriate to modify the sentence to the period already served. The applicant is at liberty unless otherwise lawfully held.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 23RD DAY OF DECEMBER 2024.

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R. NYAKUNDI

JUDGE

