



REPUBLIC OF KENYA



**Ndungu v Republic (Criminal Revision E210 of 2024)  
[2025] KEHC 1670 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1670 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CRIMINAL REVISION E210 OF 2024  
HI ONG'UDI, J  
FEBRUARY 13, 2025**

**BETWEEN**

**DAVID WANGAI NDUNGU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From original sentence of Hon. R. Ombata – Senior Resident Magistrate in Criminal Case No E790 of 2021 of the Chief Magistrate’s court at Nakuru delivered on 23rd September, 2021)*

**RULING**

1. The Applicant David Wangai Ndungu was charged and convicted of the offence of threatening to kill contrary to section 223(1) of the *Penal Code*. He first appeared in court on 21<sup>st</sup> March, 2021. He was later convicted on his own plea of guilty on 11<sup>th</sup> August, 2021 and was sentenced to eight (8) years imprisonment on 23<sup>rd</sup> September, 2021.
2. He filed this undated notice of motion seeking the following orders:
  - a. Reduction of the eight (8) years sentence
  - b. Conversion of eight (8) years sentence into a non-custodial sentence.
  - c. Any other appropriate relief.
3. During the hearing, the applicant only prayed for consideration of the period he had been in custody before sentence which to him was eight (8) months.
4. M/s Okok Counsel for the respondent opposed the application. She urged that in sentencing the trial court considered the fact that the applicant had been convicted of the offence of grievous harm contrary to section 234 of the *Penal Code* and sentenced to two (2) years imprisonment. Further that the pre-sentencing report showed that he was a threat to the society.



5. Counsel conceded to the fact that the period the applicant was in custody prior to the sentence was never considered.
6. From the facts on record the complainant is the father to the applicant. In the previous conviction the complainant was the applicant's elder brother. I have had a chance to look at the pre-sentence report. It shows that the applicant is a nuisance to the community. He is always drinking alcohol and steals to buy the drinks. In fact, it was recommended that the applicant be subjected to rehabilitation and proper counselling.
7. I note that besides the threats the applicant was armed with a knife though he did not cause any physical injury to the complainant – his father. He has been in prison since 2021. The applicant should learn to show his parents respect whether drunk or sober.
8. In view of his conduct the court declines to interfere with the sentence. I however order that the eight (8) year sentence runs from 1<sup>st</sup> March, 2021 when the applicant first appeared in court.
9. Orders accordingly

**DELIVERED VIRTUALLY, DATED AND SIGNED THIS 13<sup>TH</sup> DAY OF FEBRUARY, 2025 IN OPEN COURT AT NAKURU.**

**H. I. ONG'UDI**

**JUDGE**

