



REPUBLIC OF KENYA



KENYA LAW
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**Kosgei v Republic (Criminal Revision E186 of 2025)
[2025] KEHC 11016 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11016 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E186 OF 2025
RN NYAKUNDI, J
JULY 24, 2025**

BETWEEN

MATHEW KOSGEI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Representation:

M/s Sidi for the state

1. The Applicant was charged with the offence of threatening to kill. The brief facts are on the 22nd day of December 2024 at Tilatil area in Karuna/Meibeki location, Moiben Sub County within Uasin Gishu county, without lawful excuse uttered “Nitakuwa Nitakukatakata” while armed with a panga threatening to kill Joseph Kipyego.
2. He pleaded guilty to the offence, was convicted and sentenced to a 3 years imprisonment. He has now applied for his sentence to be reviewed and the remainder of the sentence of 21 months’ probation.

Decision

3. This Application is based on the provisions of the criminal procedure code namely Section 357, 362, 364 as read with 382. the constitution also provides under Art 50 (2) (p) (q) as follows:
 - (p) to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishments for the offence has been changed between the time that the offence was committed and the time of sentencing; and
 - (q) if convicted, to appeal to, or apply for review by, a higher court as prescribed by law.



- (3) if this Article requires information to be given to a person, the information shall be given in language that the person understands.
4. The same constitution in Art 50 (6) (a) (b) expressly states as follows:
- A person who is convicted of a criminal offence may petition the High Court for a new trial if-
- a. The person's appeal, if any, has been dismissed by the highest court to which the person is entitled to appeal, or the person did not appeal within the time allowed for appeal; and
 - b. new and compelling evidence has become available.
5. This application is based on the social inquiry report dated 22nd July 2025 carried out by the probation officer which contextualized the issues as follows; Sources of information prison records, inmate families, community and the complainant

Current Family and Personal History

The inmate was born to Late Michael Kipkosgei who passed away in 2008 and Rosa Kosgei who is alive and a resident of Kapchem village. Karuna location in Moiben Sub County. He is the Seventh born in a family of ten (10) siblings. He hails from an extended family setup sitting on 10 acres piece of ancestral land. The family engages in maize farming for subsistence use and as means of earning income. The family had no prior criminal records. His family members who have occasionally visited him in custody vouched for his early release assuring that he will observe peace and are willing to be part of community interventions.

Personal history

Mathew popularly known as Kimeli was born and raised at Karuina area in Moiben Sub County. He has primary school level of education having studied up to class 8. He has no skills training. Having failed to attain higher education or acquire skills training, he ventured into full-time farming. He had a family of his own having initially married to Naomi Kosgei with whom they were blessed with two children currently in school. However, his marriage disintegrated after it was discovered that they were related hence against their culture. They were forced to part ways and the inmate retained the children now in Grade 6 and 4.

The inmate submitted that this was his first conviction. Although he admits to a history of alcoholism, he says he has never abused any form of drugs.

Prison Assessment Rehabilitation and Re-Integration

Prison authorities at Eldoret GK Prison gave a positive account of the inmate. They reported that for the period he had been in custody, he has always observed high level of discipline and behaved well. He has undergone psychosocial rehabilitation programs and enrolled for spiritual activities. He has been deployed for farm work. Prison officials consider him low risk offender who can benefit from community court sanctions. We established that he has a stable accommodation back home and a supportive family. He was into maize farming and engaged in casual jobs to supplement his income. He intends to resume the same if released. His family has already reached out to the complainant in the matter and reached a reconciliation. They signed a reconciliation agreement whose content include resolve by the victim to forgive the inmate and the two to co-exist peacefully.



Offenders' attitude Towards Non-custodial Sentence

The inmate is remorseful and pleads for a chance to serve the remainder of his sentence in the community. He associates himself with the agreement reached between his family and the complainant and promise to maintain peace.

Conclusion

My Lord, the inmate in the present matter has expressed sincere remorse for his actions and respectfully pleads for an opportunity to serve the remainder of his sentence within the community. He is a resident of Karuna in Moiben Sub County and a single parent to two school-going children following the breakdown of his marriage. Prior to his incarceration, he had sole custody of the children, who are now under the care of his mother.

Our assessment confirms that he was the sole breadwinner for his immediate family, and his imprisonment has had a significant adverse impact on his dependents. Further inquiry revealed that the dispute with the complainant, a neighbor, arose from allegations of an extramarital affair involving the complainant's spouse. However, through family intervention, the parties have reached an amicable reconciliation. The complainant has formally forgiven the inmate.

This resolution was facilitated by their village headman, who confirmed that both parties have committed to peaceful co-existence. He expressed confidence that no further hostility is anticipated and supports the inmate's early release.

The inmate has access to stable housing and a supportive family environment in Karuna. If released he intends to resume farming as a means of livelihood. He has pledged to uphold peace and comply fully with any non-custodial court sanctions that may be imposed. His family has also committed to supporting and sustaining efforts toward long-term reconciliation between the inmate and the complainant.

Recommendation

Your Lordship, the findings herein indicates that the inmate and the complainant have reached a reconciliation agreement and resolved their differences. The victim no longer feels threatened by the inmate's presence in the community and does not object to his early release. Given the inmate's role as a single parent, we are of the opinion that probation supervision would be more appropriate in this case. This will provide an opportunity to implement a structured sentence plan focusing on self-control, anger management, antisocial behavior, and conflict resolution skills. In view of the above, we find the inmate suitable to serve the remaining (21 months) of his sentence under Probation order

6. The role of non-custodial sentence should underpin our penal system in which custodial sentence remains a recourse of last resort in punishing offenders. The sentence policy guidelines of the judiciary 2023 provides a framework in which Judicial discretion should be exercised to arrive at a fair and proportionate sentence on individualized circumstances. The objectives and principles of sentencing are well articulated and defined as follows:
 - a. Retribution: to punish the offender for his/her criminal conduct in a just manner.
 - b. Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.



- c. Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law-abiding person.
 - d. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.
 - e. Community protection: to protect the community by incapacitating the offender.
 - f. Denunciation: to communicate the community's condemnation of the criminal conduct.
 - g. Reconciliation: To mend the relationship between the offender, the victim and the community.
 - h. Reintegration: To facilitate the re-entry of the offender into the society.
7. It came out clearly from his research; Supervision is an essential component of community-based correction with the primary objective of enforcing compliance with the conditions of release to minimize risk to the public and to re-integrate the offender into the law-abiding lifestyle. Lax supervision and failure to deal firmly with those who persistently violate the terms of release can bring an entire system into disrepute in criminal justice. (Killinger GG and Cromwell P.F, 1990). "The law is without doubt a remedy for great evils, yet it brings with it evils of its own". (Subbrano V.C.G. 1993). There are three primary gateways in the criminal justice. The first is at the police at the initial stage of apprehension, the second is at the court after the determination of guilt and passing of a sentence and the third is the gateway to the community at the conclusion of the sentence (Johnson R, 2003).
 8. Rule 8.2 of the Tokyo rules on non-custodial affirm that courts or sentencing authorities may dispose of cases in any of the following ways-verbal sanctions, admonitions, reprimands and warning, conditional discharge, status penalty, economic sanctions and monetary restitution, restitution to the victim or compensation order, confiscation or expropriation, suspended or deferred sentence, probation and judicial supervision, community service order, house arrest and any other non-institutional treatment. Supervision is critical in realization of sentencing objectives. This is operationalized as poor and lax supervision leads to reconviction and abscondism. The quality and number of contacts between the offender are key in reforming, re-integrating the offender. The caseload per officer and the frequency of contacts between the officer and the probationer determines the level of intensity of supervision based on the risk category of the probationer. The community plays key role in having offenders change. Community attitude, home environment is deterministic of offender's potential to change.
 9. Sentencing is a discretionary process mainly exercised by trial courts who have the advantage to appreciate the circumstances of the offence and how it applies to the sentencing objectives and principles within the regulatory framework of our sentencing policy guideline 2023. This court is being asked to review the custodial sentence and have it substituted with non-custodial sentence. As I appreciate the record and the impugned decision on sentence I bear in mind that this is one area of law which involves the weighing of may complex factors, it will always be possible to point to some factors which should arguably have been taken into account or left out of account; even if they should have been, the court should not intervene unless it is convinced that this would have resulted in the decision going the other way.
 10. One of the most fundamentals of sentencing is proportionality meaning that elements on the gravity of the offence and moral blameworthiness of the offender carries more weight in a trial court figuring out the final verdict to be imposed. The more serious the crime and its consequences the heavier the sentence would be meted out. The doctrine of proportionality in sentencing demands that punishment or sanctions so passed speaks out loudly against the offence and the conduct of the accused



person. The court in *R v Morrissette*, 1970 CanLII 642, 1 CCC (2d) 307 at Para 10 (Sask CA); *R v BO2*, 2010 NLCA 19 at para 51 held as follows:

In my view, the public can be best be protected by the imposition of sentences that punish the offender for the offence committed, that may deter him and others from committing such an offence and that may assist in his reformation and rehabilitation. If the offender is one for whom reformation is beyond question, then the public can be protected only by depriving him of his freedom. In the case of other offenders, and particularly young offenders, the principal element or consideration, consonant with the maintenance of public confidence in the effective enforcement of the criminal law, should be the offenders' reformation and rehabilitation.

11. The Applicant in this case through this application on review of sentence is inviting the court to depart from the objective general deterrence to rehabilitation while serving on non-custodial sentence as recommended by the probation officer. I consider one of the key objectives to be met for a court to review the custodial sentence and have it substituted with a community service order or probation order is to achieve restorative justice approaches to sentencing. In my considered view it does remedy adverse effects of crime in a manner that addresses the needs of all parties involved in the criminal dispute. Hence restorative justice accomplishes rehabilitation of the offender, reparation to the victim and the community which in turn promotes a sense of responsibility to the offender to acknowledge the harm done to the victims of the offence. My reading of the probation officer report the applicant has not demonstrated regret or remorse for the offence. The victims described in the charge sheet and who gave evidence on oath have not filed a victim impact statement pursuant to Art 50(9) of the [constitution](#) as read with section 3, 4 (2) & 9 of the [victim Protection Act](#) No. 17 of 2014. The court in *R v Mahoney*, 2018 NLCA 16 on this very same subject under consideration held that:

Retribution is not the same as vengeance. Vengeance “has no role to play in a civilized system of sentencing.” It represents an uncalibrated act of harm upon another, frequently motivated by emotion and anger, as a reprisal for harm inflicted upon oneself by that person. Retribution in a criminal context, by contrast, represents an objective, reasoned and measured determination of an appropriate punishment which properly reflects the moral culpability of the offender, having regard to the intentional risk-taking of the offender, the consequential harm caused by the offender, and the normative character of the offender's conduct. Furthermore, unlike vengeance, retribution incorporates a principle of restraint; retribution requires the imposition of a just and appropriate punishment, and nothing more.

12. In the context of this file and the recommendations by the probation officer one wonders how the inmate is very remorseful and pleads for forgiveness when no effort has been undertaken to seek restoration or victim offender mediation with the victims of the offence and the community who may be offended by his wrong doing. What would be the implication of a model such as this which has not incorporated the contribution of the victims of the offence in the early release of the offender. It seems to me that as a justice system would have created a chaotic crucible that will turn the experience of imprisonment into what might be described as a penal control frolic. I say this because the decongestion exercise is more of reducing prison population than about priorities and context of rehabilitation and reintegration of the offenders to the communities. The purpose of conditional release of probation or community service order is to contribute to the maintenance of a just, peaceful and safe society by means of decisions on the timing and conditions of release that will best facilitate the rehabilitation of offenders and their reintegration into the community as law abiding citizens.



13. The inference one draws from the facts of this case and the information provided by the probation officer weighed together with other components of the criminal justice systems on sentencing there exist no compelling or substantial circumstances in favor of the applicant to justify a lesser sentence. As a final note the probation officer report failed to pay attention to a broader conception of the victim rights and protection of the community who happen to be the main actors in the rehabilitation and community supervision of the applicant while on release to non-custodial sentence. The application for an early release of the Applicant is declined for want of merit.

DATED, DELIVERED AND SIGNED AT ELDORET THIS 24TH DAY OF JULY 2025.

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R. NYAKUNDI

JUDGE

