



**Kiptoon v Republic (Miscellaneous Criminal Application
E038 of 2023) [2024] KEHC 2399 (KLR) (6 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2399 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
MISCELLANEOUS CRIMINAL APPLICATION E038 OF 2023**

RB NGETICH, J

MARCH 6, 2024

BETWEEN

MATHEW KIPTOON APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant jointly with two others were charged with five counts of offences of threatening to kill. Count I is the offence of threatening to kill contrary to section 223(1) of the Penal Code. The particulars of the charge were that the accused on the 17th day of July, 2022 at around 1700Hrs in Kipcherere Sub-location in Baringo North Sub- County within Baringo County together with another not before court while armed with arrows bows and pangas without lawful excuse threatened to kill Joshua Kiptoo Chepkonga.
2. Count II is the offence of threatening to kill contrary to section 223(1) of the *Penal Code*. The particulars of the charge were that the accused on the 17th day of July, 2022 at around 1700Hrs in Kipcherere Sub-location in Baringo North Sub- County within Baringo County together with another not before court while armed with arrows bows and pangas without lawful excuse threatened to kill Jacob Kipsang Tulel.
3. Count III is offence of threatening to kill contrary to section 223(1) of the *Penal Code*. The particulars of the charge were that the accused on the 17th day of July, 2022 at around 1700Hrs in Kipcherere Sub-location in Baringo North Sub- County within Baringo County together with another not before court while armed with arrows bows and pangas without lawful excuse threatened to kill Moses Chepcheng Cheplom.
4. Count VI is the offence of threatening to kill contrary to section 223(1) of the *Penal Code*. The particulars of the charge were that the accused on the 17th day of July, 2022 at around 1700Hrs in



Kipcherere Sub-location in Baringo North Sub- County within Baringo County together with another not before court while armed with arrows bows and pangas without lawful excuse threatened to kill Florence Cherotich Kipsimppta.

5. Count V is the offence of threatening to kill contrary to section 223(1) of the *Penal Code*. The particulars of the charge were that the accused on the 17th day of July, 2022 at around 1700Hrs in Kipcherere Sub-location in Baringo North Sub- County within Baringo County together with another not before court while armed with arrows bows and pangas without lawful excuse threatened to kill Moses Kiberenge Rotich.
6. The accused persons pleaded not guilty to the charges and the matter proceeded for trial. By judgement delivered on the 24th March, 2023, the accused persons were convicted and sentenced to serve 4 years imprisonment in each count to run concurrently.
7. The Applicant now seek 8 months he served in remand be computed in sentence under section 333(2) of the *Criminal Procedure Code* and he be placed on a non-custodial sentence for the remaining part of the sentence on ground that he has young children who depend on him. He said he is to complete his sentence on the 6th of December 2025.
8. The prosecution informed the court that they rely on the social inquiry report filed on the 7th day of February, 2024. The social inquiry report indicates that victims who are members of Nyumba kumi and village elders held a meeting together with Assistant chief and they resolved to oppose applicant being released to serve remaining sentence out of prison on ground that the attack on the victims who are village elders should be condemned in the strongest way possible so as to deter would be offenders in the community. The family of the inmate on the other hand prayed that the inmate be released so that he can rebuild his life.

Determination

9. I have considered sentiments of the local administration, the victims and family of the applicant. I take note of the fact that victims herein are community leaders who were threatened with death by the applicant and others. I agree with sentiments by the victims and the local administration that sentence imposed should deter other would be offenders from attacking or threatening to attack elders in the community. Considering circumstances of this case, I find that this matter is not suitable for revision/ review of sentence.
10. In respect to period served in remand, section 333 (2) of the *Criminal Procedure Code* provides that period served by accused in remand should be considered in the sentence imposed. This was restated by court of appeal in the case of *Abamad Abolfathi Mohammed & Another v Republic*, [2018] eKLR as follows:-

“By dint of section 333 (2) of the *Criminal Procedure Code*, the court was obliged to take into account the period that they had spent in custody before they were sentenced. Although the learned judge stated that he had taken into account the period the appellants had been in custody, he ordered that their sentence shall take effect from the date of their conviction by the trial court. With respect, there is no evidence that the court took into account the period already spent by the appellants in custody. “Taking into account” the period spent in custody must mean considering that period so that the imposed sentence is reduced proportionately by the period already spent in custody. It is not enough for the court to merely state that it has taken into account the period already spent in custody and still order the sentence to run from the date of the conviction because that amounts to



ignoring altogether the period already spent in custody. We find that the first appellate court misdirected itself in that respect and should have directed the appellants' sentence of imprisonment to run from the date of their arrest on 19th June 2012.”

11. From the foregoing, I decline to imposed noncustodial sentence for the remaining period of sentence. The period served in remand to be reduced from the sentence imposed by the trial court.
12. Final orders: -
 1. Application for review of sentence is hereby dismissed.
 2. Period served by applicant in remand to be reduced from sentence imposed by the trial court.

RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KABARNET THIS 6TH DAY OF MARCH 2024.

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RACHEL NGETICH

JUDGE

In the presence of:

- Applicant present.
- Ms Ratemo for State.
- Elvis – Court Assistant.

