



**Amalema v Republic (Criminal Revision E041 of 2024)
[2024] KEHC 4318 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4318 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E041 OF 2024
RN NYAKUNDI, J
APRIL 11, 2024**

BETWEEN

ALEX AMALEMA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of threatening to kill contrary to section 223(1) of the *Penal Code*. The particulars of the offence are that on the 3rd day of June, 2023 at about 10:00Am in Lelmokwo village, Kapletich sub-location, Ainabkoi Sub- County within Uasin Gishu county, the applicant without lawful excuse uttered words “wewe mwanamke nit akua nitakudunga na hii kisu nikuuwe” while armed with a knife threatening to kill Jessica Amalema.
2. The applicant pleaded guilty to the offence before Hon. Menya on 5th June, 2023 and as a consequence, he was convicted on his own plea of guilty and sentenced to serve 5 years imprisonment.
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. The applicant seeks a sentence review based on the probation report filed on 25th March, 2024. The said report records as follows:
5. Alex Amalema was born in 1999 at Kipkabus village within Waunifor location. The inmate engaged in casual jobs until he was arrested and jailed for this offence. He is a single individual with no parental responsibilities. The report revealed that the applicant has reformed and he is well behaved. Further, the complainant was interviewed and he was not opposed to his sentence review. He indicated that he has forgiven his brother and she is ready to welcome him back home.



6. The report also stated that the applicant is remorseful and he promised not to reoffend. It was then recommended that the applicant is suitable for a non-custodial sentence i.e. a probation order for a period of thirty-one months. The officer added that during this period he will be counseled on anger management, dangers of abusing drugs and substance abuse and advised on income generating activities.
7. 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.
8. I have considered the offence in question and the aggravating factors. The sentencing objectives in Kenya have been captured in the [Sentencing guidelines](#) 2023 to be the following: -
 - i. Retribution: to punish the offender for his/her criminal conduct in a just manner.
 - ii. Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
 - iii. Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law-abiding person.
 - iv. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.
 - v. Community protection: to protect the community by incapacitating the offender.
 - vi. Denunciation: to communicate the community's condemnation of the criminal conduct.
 - vii. Reconciliation: To mend the relationship between the offender, the victim and the community.
 - viii. Reintegration: To facilitate the re-entry of the offender into the society.
9. My considered view is that the present case satisfies the above criteria for reasons that the applicant is a first offender, he is remorseful, he pleaded guilty and the complainant is not opposed to his release. It appears that the parties have had a victim-offender mediation for the complainant to forgive him. All these factors considered wholesomely, call for a non-custodial sentence.
10. This court is clothed with wide powers under article 165 (6) and (7) of the [Constitution](#) and section 362 as read with section 364 of the [CPC](#) to look at the legality of the order on sentence by the trial court. Just a glance of it shows clear mitigation factors which reduces the seriousness of the offence or the culpability of the applicant. Again, with no special order of priority they include the following:
 - a. Youth of the applicant
 - b. Immaturity of the applicant



- c. The previous good character of the applicant
 - d. Restitution of part of the stolen property to the complainant
 - e. A plea of guilty entered by the applicant
 - f. Cooperation with the police by the applicant after the commission of the offence
 - g. Expression of remorse by the applicant before the trial court
11. In the upshot and in considering the objectives of sentencing in totality, I am inclined to place the applicant on a probation period of thirty-one months, being the balance of his sentence. As an addition, the probation officer has an obligation in ensuring that the applicant undergoes professional counselling as proposed in the report.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 11TH DAY OF APRIL 2024.

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R. NYAKUNDI

JUDGE

