



REPUBLIC OF KENYA



**Kimutai v Republic (Criminal Revision E018 of 2024)
[2024] KEHC 4312 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4312 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E018 OF 2024
RN NYAKUNDI, J
APRIL 11, 2024**

BETWEEN

SAMWEL KIMUTAI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Representation:

Mark Mugun for the state

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 2nd January, 2024, at Duka Moja village Kamagut location, Turbo-Sub County, within Uasin Gishu county, created a disturbance in a manner likely to cause a breach of peace by threatening to hit his mother, Alice Kosgei with a stone.
2. The applicant pleaded guilty to the offence before Hon. C. Kesse on 3rd January, 2024 and as a consequence, he was convicted on his own plea of guilty and sentenced to serve 6 months 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 report indicates that the applicant wanted to beat the mother and sister while demanding a new phone. He is a student at Kitale Vocational Training College pursuing Electronics having completed Trade



- test three. During his stay in prison, his mother and sister have been visiting him weekly. They are optimistic that he has changed.
5. The applicant pleaded for leniency and that he be given a chance to serve a non-custodial sentence. He vowed to work on his anger, which is the cause of problems.
 6. The victims are his mother and sister respectively. Following their visits and interactions with the inmate, they believe he has changed. They look forward to his release to enable him continue with his studies. They wanted him to be disciplined as he had started walking with friends of bad influence.
 7. The report recommended that given he is 20 years old and single, he can be placed on CSO for the remaining two months under the supervision of the OCS Kitale Police station.
 8. 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.
 9. 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.
 10. 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 mother and sister to forgive him. Additionally, the applicant is a student who ought to go back to school and continue with his studies. All these factors considered wholesomely call for a non-custodial sentence.



11. 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 th trial court
12. In the upshot and in considering the objectives of sentencing in totality, I am inclined to place the applicant on CSO for the remaining 2 months one week under the supervision of the OCS Kitale police station. As an addition, the probation officer has an obligation in ensuring that the applicant undergoes professional counselling to help him manage anger issues.

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

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R. NYAKUNDI

JUDGE

