



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Kipkoech v Republic (Criminal Revision E036 of 2024)
[2024] KEHC 4319 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4319 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E036 OF 2024
RN NYAKUNDI, J
APRIL 11, 2024**

BETWEEN

NICKSON KIPKOECH APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of assault causing actual bodily harm contrary to section 25 of the *Penal code*. The particulars of the offence were that on the 30th day of August, 2023 at Karakwa village in Soy sub-county within Uasin Gishu county assaulted Vincent Kipchirchir thereby occasioning him actual bodily harm.
2. The applicant pleaded guilty to the offence before Hon. O. Mogire on 13th September, 2023 and as a consequence, he was convicted on his own plea of guilty and sentenced to serve two 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 sentence report dated 20th March, 2024. According to the report, the applicant is a 26-year-old. Prior to the offence he was living with his parents and siblings at their home in Kakarwa area. He has been engaged as a casual laborer to earn a living. The applicant's family members through his mother and brother expressed readiness to welcome him back home. They stated that they had been visiting him in prison. Finally, that the complainant is the applicant's younger brother who has since forgiven him.



5. The report recommended that the applicant should be released on community service for the remaining sentence period of 10 months for reasons that he is remorseful and that his home environment is favorable for his return.
6. 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.
 - f) Children in conflict with the law: - non- custodial orders should be imposed as a matter of course in cases of children in conflict with law, except in circumstances where, in light of the seriousness of the offence coupled with other factors, the court is satisfied that a custodial order is the most appropriate.
7. Considering the above-mentioned factors, I have found efficacy for community-based rehabilitation for the applicant. I see no reason why he should still serve a custodial sentence whereas the family together with the complainant have readily accepted to have him back home. In adherence to the probation officer's report, he is to serve 10 months at Barsombe chief's office under supervision by the probation officer.

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

.....

R. NYAKUNDI

JUDGE

