



REPUBLIC OF KENYA



**Kirwa Alias Sang v Republic (Criminal Revision E048 of 2024)
[2024] KEHC 4294 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4294 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E048 OF 2024
RN NYAKUNDI, J
APRIL 11, 2024**

BETWEEN

KIRWA ALIAS THOMAS KIPKORIR SANG APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Representation:

Mark Mugun for the state

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 20th September, 2018 in Eldoret Township within Uasin Gishu County, the applicant jointly with others not before the court, conspired to defraud Edwin Mosop of Cash Kshs. 1,200,000/= by falsely pretending that he was in a position to sell a piece of land known as Kiplombe/kiplombe Block 10(groweL)495 the property of Thomas Kipkorir Sang.
2. The applicant pleaded guilty to the offence before Hon. P.N. Areri on 5th April, 2023 after he entered into a plea-bargaining agreement.
3. The applicant is now before 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. According to the report, the applicant has a bachelors degree in economics. Prior to his arrest he was a business man dealing with auto vehicles. The report further suggests that from his prison assessment the applicant has been teaching other inmates owing to his qualifications.



5. The report further indicated the applicant is remorseful and requested to be allowed to serve the remaining period in the community. All these factors put into consideration, the probation officer recommended that the applicant be considered for an early release to serve the remaining term of 1 year 8 months of his sentence through probation sentence.
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.
7. 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.
8. The justice of the matter does not lie on the culpability of the applicant but also justice to the victims in so far as the circumstances of the case are concerned and this is that upon release from custody, the question of justice for the victims can be revisited and take the mode of a civil claim.
9. I have considered the circumstances of the case and I am of the view that the applicant can benefit from a probation sentence for reasons that he is a first offender, he is remorseful and he willingly entered into a plea-bargaining agreement.
10. In the upshot and in considering the objectives of sentencing in totality, I am inclined to place the applicant on a probation period of 1 year 8 months, being the balance of his sentence and within this period, parties can engage in victim-offender mediation to clear any other underlying issues.

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



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R. NYAKUNDI

JUDGE

