



**Lochuro v Republic (Criminal Revision E053 of 2024)
[2024] KEHC 3491 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3491 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E053 OF 2024
RN NYAKUNDI, J
APRIL 11, 2024**

BETWEEN

JAMES LOCHURO ALIAS RAS APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of assault causing actual bodily harm contrary to section 251 of the Penal Code. The particulars of the offence were that on the 10th day of December, 2023 at Outspan Centre in Kapseret sub-county within Uasin Gishu County, the applicant willingly and unlawfully assaulted Edwin Kemboi thereby occasioning actual bodily harm.
2. The applicant pleaded guilty to the offence before Hon. R. Odenyo on 15th January, 2024 and as a consequence, he was convicted on his own plea of guilty and sentenced to a fine of Kshs. 20,000/= in default 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 sentence report filed 25th March, 2024. According to the report, the applicant comes from a humble background. He hails from Turkana County and he came to Eldoret in search of jobs and has never returned to Lodwar. He has not been in communication with his family and up to date he is not certain whether his family knows his whereabouts.
5. Further facts suggest that he is single and he does not have dependents. Upon his release, he intends to go to Outspan where his friend will help him in settling. He has shown remorse and expressed willingness to serve a non-custodial sentence. From the stated factual background, the report



recommended that the applicant is eligible to a community service at Kiambaa police station probation sentence for a period of 2 months.

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. 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. My considered view is that the circumstances of the offence herein call for a non-custodial sentence for reasons that the applicant is a first offender, he is remorseful, he pleaded guilty and he is suitable for re-integration into the society. All these factors considered wholesomely, call for a non-custodial sentence. I see no reason why he should still serve a custodial sentence. Additionally, I am of the view that it is a matter that could benefit from victim-offender mediation to resolve any other underlying issues.



Therefore, in adherence to the probation officer's report, he is to serve a 2 months CSO at Kiambaa police station under supervision by the probation officer.

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

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R. NYAKUNDI

JUDGE

