



**Areman v Republic (Criminal Revision E089 of 2024)
[2024] KEHC 5235 (KLR) (17 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5235 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL REVISION E089 OF 2024
RN NYAKUNDI, J
MAY 17, 2024**

BETWEEN

MARKVIS AREMAN APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence threatening to kill contrary to section 223 of the [Penal Code](#). The particulars of the offence were that on the 25th day of July, 2023 at Morulem village in Turkana East Sub-County within Turkana County, the applicant without lawful excuse uttered words threatening to kill Elete Akurono. He was also charged with an alternative charge of creating disturbance in a manner likely to cause a breach of peace contrary to section 95(1)(b) of the [Penal Code](#).
2. The applicant pleaded guilty to the offence before Hon. D. Orimba on 27th July, 2023 and as a consequence, he was convicted on his own plea of guilty and sentenced to a fine of 30,000/= in default 12 months imprisonment for the first count and on the second charge a fine of Kshs. 5,000/= in default 4 months.
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 sentence review report on record. The report indicates that the applicant is 24 years old and he is married to Maureen Ekuwam and he is blessed with one child. He does casual jobs for his sustenance. That he suffers from a lastborn syndrome and he admits to be lazy and always demanding basics from his father and yet he is a married man. The report further indicates that he has promised to change and work hard for his family at large. The



applicant pleaded for leniency and forgiveness. The report recommended that the applicant is suitable for community service Order for a period of 6 months in Lokori chief's office.

5. 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.
6. Further to the aforementioned, the Community Service Orders Act makes it possible for courts to issue an order requiring the offender to perform community service. This option is available to court when the offender is convicted of an offence punishable by imprisonment for a term not exceeding three years or imprisonment for a term exceeding three years but for which the court determines that any of that term as would be appropriate be served within the community on unpaid public works.
7. The analysis of the facts of this case is such that it fits the legal framework of the Community Service Act as an alternative sentence to imprisonment. Consequently, the effective measure as recommended by the probation officer is to have the applicant serve his sentence at Lokori chief's office for a period of two months. Monthly reports shall be filed in court by the supervisor of the applicant through the probation officer. The essence of it is that any breach of any conditions by the applicant shall attract cancellation of the community service order and have the sentence reverted to custodial sanctions.

SIGNED, DATE AND DELIVERED AT LODWAR THIS 17TH DAY OF MAY 2024.

In the Presence of

Jonathan K. Bungei for the State

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R. NYAKUNDI

JUDGE

