



**Duop & 2 others v Republic (Criminal Case E030 of 2024)
[2024] KEHC 5119 (KLR) (3 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5119 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE E030 OF 2024
RN NYAKUNDI, J
MAY 3, 2024**

BETWEEN

TITCHIANG RIAL DUOP 1ST APPLICANT

GATKHOR MARIAL 2ND APPLICANT

CHUDIER CHUOL 3RD APPLICANT

AND

REPUBLIC RESPONDENT

*(Being a review on sentence in criminal case No.E.373 of 2023
before Hon. Mayamba in an order dated 11th September, 2023)*

RULING

Representation:

Mr. Kakoi for the state

1. The applicants were jointly charged with the offence of assault causing actual bodily harm contrary to section 251 of the penal code. In brief the applicants as per the state information are alleged to have committed the offence on the 1st day of September, 2023 at around 20:42 hours at Kakuma refugee camp in Turkana West Sub-County within Turkana County, jointly with others not before court unlawfully assaulted EMMANUEL NIYONIZEYE thereby occasioning him actual bodily harm. Each of the applicant pleaded guilty to the offence resulting into each one of them convicted on his own plea of guilty on 11th September, 2023 with a sentence to serve two (2) years imprisonment. Thereafter an application was filed in court on 11th March, 2024 seeking review of the custodial sentence and have it substituted with a non-custodial sentence under section 4(1) (a) as read with section 5(1) of the probation of the offenders Act.



2. In this respect have appraised the probation officer's report on each of the applicants which I find responsive for this court to exercise discretion to review the custodial sentence to that of non-custodial as recommended by the probation officer. In weighing this matter generally speaking have taken into account aggravating factors and mitigating factors as combined determinant to review the sentence. Again in no special order of priority the applicants are young offenders with a characteristic of immaturity, there is no evidence of previous conviction and therefore good character of the applicants counts towards rehabilitation. During the proceedings at the trial court each of the accused pleaded guilty to the incident as an expression of remorse, that cooperation with the court and the police by the applicants after commission of the offence ought to have carried some weight peculiar to their vulnerability as young offenders.
3. The trial court in determining sentence to be imposed him or she is required to give consideration to a reduction in the sentence on account of a guilty plea. The rationale of the reduction principle is employed because a guilty plea obviates the need for a trial, it saves considerable costs and resources and in the case of an early plea like in the instant matter it saved victims and witnesses from the ordeal of giving oral evidence. A guilty plea also serves to encourage others to plead guilty where appropriate. It is therefore incumbent upon sentencing magistrates in the process of imposing the final verdict of the sentence to make allowance for a guilty plea. Unfortunately this was not the case here despite the compelling circumstances which existed in favour of the applicants.
4. In the foregoing reasons the custodial sentence is hereby varied and substituted with a non-custodial sentence for the balance of the period remaining to be placed on Community Service at Kakuma police post with effect from this order.

SIGNED, DATED AND DELIVERED THIS 3RD DAY OF MAY, 2024

In the presence of;

Mr. Kakoi for the state

Applicants present

R NYAKUNDI

JUDGE

