



**Ejikon & 2 others v Republic (Criminal Revision E092 of 2024)
[2024] KEHC 5267 (KLR) (17 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5267 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL REVISION E092 OF 2024
RN NYAKUNDI, J
MAY 17, 2024**

BETWEEN

DAVID EJIKON 1ST APPLICANT

EBEI ESUROT 2ND APPLICANT

LOBUI ESEKON 3RD APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicants were charged with the offence of entering a protected area without a permit contrary to section 102(1)(a) of the *wildlife conservation and management Act*, 2013. They were also charged with the alternative charge of conveying fishing net into a protected area contrary to section 102(1) (f) of the *Wildlife Conservation and Management Act*, 2013. The third count they were charged with was that of undertaking extractive activity in a marine protected area contrary to section 102(1)(g) of the *Wildlife conservation and management Act*, 2013.
2. The applicants pleaded guilty to the offence before Hon. D. Orimba on 23rd June, 2023 and as a consequence, they were convicted on their own plea of guilty and sentenced to a fine of Kshs. 150,000/= in default 2 years and 3 months imprisonment cumulative of the three counts.
3. The applicants have 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 applicants seek sentence review based on the sentence review reports on record. The reports are responsive. For the 1st applicant, it is reported that he is 31 years old, with a family who depend on him. He is remorseful and seeks leniency. The probation officer recommended that he be placed on a non-



custodial sentence. The report for the 2nd applicant is not any different. He is 28 years old and he is remorseful. He was recommended for a CSO at the chief's office Kalokol primary school. As for the 3rd applicant it is reported that he has been of good behavior while in prison. He is remorseful and sad for the action that has cost him the time in prison and he welcomes the non-custodial sentence. The probation officer recommended a community service at Nakwamekwi primary school.

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. Having gone through the facts of the present case, the circumstances fit 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 applicants serve the remainder of the sentence at their respective stations. Monthly reports shall be filed in court by the supervisors of the applicants 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.

R. NYAKUNDI

JUDGE

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In the Presence of

Jonathan K. Bungei For the State

Appellant

