



**Elim v Republic (Criminal Revision E060 of 2024)
[2024] KEHC 5225 (KLR) (17 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5225 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL REVISION E060 OF 2024
RN NYAKUNDI, J
MAY 17, 2024**

BETWEEN

CHRISTOPHER ELIM APPLICANT

AND

REPUBLIC RESPONDENT

*(Being Review on Sentence from the Decision in Cr.
Case E033/2023 by Hon. D. Orimba on 9.1.2024)*

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 are that on 7th January, 2024 at Lopur in Turkana South Sub-County within Turkana County, the applicant assaulted one Selina Ikweel, his mother.
2. The applicant pleaded guilty to the offence and as a consequence, he was convicted on his own plea of guilty and sentenced to a fine of Kshs. 20,000/= in default serve 9 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 sentence review. On record I have a sentence review report. The report is responsive. The probation officer recommends that the applicant should serve a non-custodial sentence on probation. It is indicated that he is remorseful and take full responsibility of being so arrogant and careless to the point that he was lured to engage in assault. I have considered the report and the offence in question.
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.
 - 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.
6. The factors aforementioned urge that first offenders be considered for a non-custodial sentence. The character and the age of the defendant also ought to be considered. From the sentence review report, it is indicated that the applicant is remorseful and takes the blame for being arrogant. I am inclined to grant the applicant a chance to serve a non-custodial sentence. Let the applicant serve the remainder of the sentence under probation i.e. 5 months. The applicant shall be under the supervision of the Probation officer and should strictly report to the said officer and in turn monthly reports shall be filed in court. In default, the custodial sentence shall revert.

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

In the Presence of

Mr. Bungei K. Jonathan for the State

Appellant

R. NYAKUNDI

JUDGE

