



**Esilan v Republic (Criminal Revision E088 of 2024)
[2024] KEHC 5665 (KLR) (17 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5665 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL REVISION E088 OF 2024
RN NYAKUNDI, J
MAY 17, 2024**

BETWEEN

SAMMY EWOI ESILAN 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 6th of May, 2023 in Kanamkemer village Turkana Central Sub-County of the Turkana County the applicant uttered the words “Nimetumwa nikuje nikuue ndio maisha yangu ikue v”. He also faced an alternative charge of malicious property contrary to section 339 (1) of the [Penal Code](#).
2. The applicant pleaded guilty to the offence before Hon. N. Idagwa on 9th May, 2023 and as a consequence, he was convicted on his own plea of guilty and sentenced to serve 2 years imprisonment for the 1st count and a fine of Kshs 5,000/= in default to 18 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 sentence review report on record. The report indicates that the applicant admits to the offence and pleads for leniency and forgiveness before court and he is ready to change and work in the family. The report recommended that the applicant is suitable for community service Order for a period of 6 months in Kanamkemer 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 Kanamkemer chief's office for a period of six 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.

.....

R. NYAKUNDI

JUDGE

In the Presence of

Mr. Jonathan K. Bungei for the State

Appellant

