



REPUBLIC OF KENYA



**KENYA LAW**  
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**Etienne v Republic (Criminal Revision E049 of 2024)  
[2024] KEHC 5675 (KLR) (17 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5675 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT LODWAR  
CRIMINAL REVISION E049 OF 2024  
RN NYAKUNDI, J  
MAY 17, 2024**

**BETWEEN**

**DEKODIO ETIENNE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being Review on Sentence from the Decision in Cr. Case No.E468of 2023  
by Hon. C. A Mayamba (Senior Principal Magistrate on 15.11.2023)*

**RULING**

1. The applicant was charged with the offence of assault causing actual bodily harm contrary to section 251 of the Penal Code.
2. The applicant pleaded guilty to the offence and was convicted on his own plea of guilty. As a consequence, he was sentenced to 1 year in prison.
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 is not responsive. It is reported that he is a 31-year-old male adult of Burundian origin. That he is a repeat offender who was discharged on March, 2023 after being charged with a similar offence having committed against the same victim who was his wife. He has no formal education and he has no known relatives within Kakuma refugee camp. The victim in this matter is known to him and left Kenya to her home country immediately after his conviction after expressing her fears and reservations towards him being granted a second chance on a non-custodial sentence. That currently he has no fixed place of aboard and therefore it would be difficult to reintegrate him back to the community smoothly and supervise him. It was recommended that he is not suitable for a non-custodial sentence.



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.

With regard with this case, it appears that there was more emphasis on deterrence than rehabilitation. The applicant in this case had no previous convictions. He pleaded guilty to the charge which could have contributed to a reduction of sentence. The circumstances in which the crime was committed is undoubtedly such as to render it necessary such as to render to impose a non- custodial sentence. The Fact that the Applicant is relatively young and that she is remorseful is a factor which is favourable to the Applicant that appropriately releasing her to the home based rehabilitation would not be prejudicial to society.

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 facts and report in the instant case are not positive to warrant a non-custodial sentence. The applicant is reported to be a repeat offender and therefore a non-custodial sentence would not achieve the purpose of rehabilitation. The applicant has since served four months out of the 1-year sentence. I am of the considered view that he is not suitable for a non-custodial sentence at this stage. The circumstances of the case are unfortunate, particularly the fact that he assaults the one person with whom he ought to be taking care of. Even worse, he has done it for the second time and perhaps many other times which did not see light of day. The sentence meted is appropriate in ensuring that he has fully rehabilitated. The applicant therefore shall serve the imposed sentence to completion.
8. It is so ordered

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

**In the Presence of**

**Bungei K. Jonathan**

**Appellant**

.....

**R. NYAKUNDI**

**JUDGE**

