



REPUBLIC OF KENYA



KENYA LAW
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**Lokupura v Republic (Criminal Revision E101 of 2024)
[2024] KEHC 5662 (KLR) (17 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5662 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL REVISION E101 OF 2024
RN NYAKUNDI, J
MAY 17, 2024**

BETWEEN

LOPEYOK LOKUPURA APPLICANT

AND

REPUBLIC RESPONDENT

*(Being Review on Sentence from the Decision on Cr. Case
No. E352 of 2023 by C.A Mayamba (SPM) on 31.8.2023)*

RULING

Representation:

Mr. Jonathan K. Bungei for the State

1. The applicant was charged with the offence of assault causing bodily harm contrary to section 251 of the [Penal Code](#). He also faces an alternative charge of creating disturbance in a manner likely to cause a breach of peace contrary to section 95(1)(b) of the [Penal Code](#).
2. The applicant pleaded guilty to the offence before Hon. C.A Mayamba on 5th September, 2023 and as a consequence, he was convicted on his own plea of guilty and sentenced to 1 year imprisonment on the first count and six months imprisonment on the second count
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 responsive. The report indicates that for the period he has been in custody, he has changed a lot and he now a disciplined person. He is remorseful and regrets committing the offence. He prayed that the



court be lenient and consider a non-custodial sentence. The probation officer recommended a CSO for the remaining period at the township 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. Having gone through the facts of this case, I am satisfied that applying the principal of proportionality, the Applicant's sentence be reviewed to the period already served. He is at liberty unless otherwise unlawfully held

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

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R. NYAKUNDI

JUDGE

