



**Marok v Republic (Criminal Revision E106 of 2024)  
[2024] KEHC 5270 (KLR) (17 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5270 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT LODWAR  
CRIMINAL REVISION E106 OF 2024  
RN NYAKUNDI, J  
MAY 17, 2024**

**BETWEEN**

**LONGOLI MAROK ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged with the offence of threatening to kill contrary to section 223(1) of the [Penal Code](#).
2. The applicant pleaded not guilty and the matter proceeded to a full trial where the prosecution summoned four witnesses in supporting their case. At the end of the trial the applicant was found guilty and sentenced to 2 years 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 Probation sentence report on record. It is reported that so far he has served 13 months and he has been performing general duties as assigned. The offender is remorseful and pleads for mercy. He is married to three wives and blessed with 8 children who depend on him. The report indicate that the period served in custody has shaped his character and that he could benefit from 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.
  - 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 charge in question speaks to an accused person who has anger issues that need to be worked on. Besides that, I believe that victim offender mediation should be encouraged even as he seeks to serve a non-custodial sentence. The period he has been in custody has shaped his character in different ways and to this end, he could greatly benefit from a non-custodial sentence.
7. From the analysis of the facts and in considering the probation report, I am of the considered opinion that the applicant ought to benefit from a non-custodial sentence given that he is a suitable candidate for reintegration. The applicant is therefore placed on probation for period of 1 year, within which period the probation officer should assist in ensuring that the applicant has managed his anger issues. It is necessary that during the period under review while the applicant is serving probation sentence, quarterly reports be filed in court by the probation officer to capture the elements of restorative justice in this case.

**SIGNED, DATE AND DELIVERED AT ELDORET THIS 17<sup>TH</sup> DAY OF MAY 2024.**

**In the Presence of**

Mr. Jonathan Bungei for the State

Appellant

.....

**R. NYAKUNDI**

**JUDGE**

