



**Nakapel v Republic (Criminal Revision E100 of 2024)  
[2024] KEHC 5241 (KLR) (17 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5241 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT LODWAR  
CRIMINAL REVISION E100 OF 2024  
RN NYAKUNDI, J  
MAY 17, 2024**

**BETWEEN**

**EKIRU NAKAPEL ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged with three counts; the offence of riding a motorcycle without due care and attention contrary to section 49(1) of the [Traffic Act](#); Riding a motorcycle without insurance certificate contrary to section 103(b)(3)(7) of the [Traffic Amendment Act](#); Riding motorcycle without a driving license contrary to section 203(b)(5) as read with section 103(b)(7) of the [Traffic Amendment Act](#).
2. The applicant pleaded guilty to the offence before Hon. I.K. Rono on 25<sup>th</sup> January, 2024 and as a consequence, he was convicted on his own plea of guilty and sentenced to 5 months imprisonment on all counts cumulatively.
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 positive. It is indicated that the applicant has reformed during his supervision period in prison. He has learned different kind of skills. the report further indicates that the applicant is remorseful and seeks leniency. It is recommended that the applicant is a perfect fit for a Community Service Order in the chief's office nanam ward Lokichogio.
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. However, having considered the offence in question and the age of the victim, 8. I am of the considered view that the applicant has learned a lesson for the period served in custody. The objectives of sentencing in their totality favor the circumstances of this case. The sentence be and is hereby reviewed to the period already served. The applicant shall be set at liberty, unless he is otherwise lawfully held.

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

.....

**R. NYAKUNDI**

**JUDGE**

In the Presence of

Appellant

Mr. Jonathan K. Bungei for the State

