



**Yuol v Republic (Criminal Revision E095 of 2024)
[2024] KEHC 5664 (KLR) (17 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5664 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL REVISION E095 OF 2024
RN NYAKUNDI, J
MAY 17, 2024**

BETWEEN

MACHOT TUT YUOL 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](#). The particulars were that on 27th day of September, 2023 at around 2000hrs in Kakuma refugee camp in Turkana West Sub-County within Turkana County, the applicant threatened to kill while armed with a knife and without lawful excuse uttered threatening words to Nyayual Chol Badeng.
2. The applicant pleaded guilty to the offence and as a consequence, he was convicted on his own plea of guilty and sentenced to 1 year 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 sentence review. On record I have a sentence review report. The report is responsive. The probation officer recommends that the applicant should serve a non-custodial sentence on probation where he will be closely monitored and through counselling go back to school, home visits and empowerment with life skills. The report indicated that the applicant is a first offender, he is remorseful and willing to reconcile with the victim. I have considered the report and the offence in question.
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 factors aforementioned encourage that first offenders be considered for a non-custodial sentence. From the sentence review report, it is indicated that the applicant is remorseful and he is willing to reconcile with the victim. I also note that he has already missed out for two terms from school, being a form 2 student at Visionary secondary school. Given these circumstances, I am of the considered view that on conviction, a non-custodial sentence would have been suitable.
7. Having gone through the record, and conscious of the objectives of sentencing, I am persuaded that the applicant has learned a lesson for the duration served in custody. 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 17TH DAY OF MAY 2024.

In the Presence of

Mr. Jonathan K. Bungei for the State

Appellant

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R. NYAKUNDI

JUDGE

