



**Ekai v Republic (Criminal Revision E115 of 2024)
[2024] KEHC 6953 (KLR) (11 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6953 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL REVISION E115 OF 2024
RN NYAKUNDI, J
JUNE 11, 2024**

BETWEEN

JAMES EKAI APPLICANT

AND

REPUBLIC RESPONDENT

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 a fine of twenty thousand and in default 6 months 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 sentence review report on record. The report is responsive. According to the report, the home environment is conducive and secure for the applicant’s return. That he is physically fit and able to perform community service if given an opportunity to do so. The prison authorities indicated that he has been participating in spiritual nourishment activities, guiding and counselling sessions. He has also been active on the roles assigned to him by the wardens. The authorities spoke well of him and considered him as someone who is disciplined and well mannered. He is a 22-year-old young man who was provoked by a friend. He responded by fighting back in order to defend himself therefore causing actual bodily harm to his friend. The probation officer to this end recommended a CSO at Kainuk secondary school.
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.

In the case of *Republic vs Felix Madalitso Keke* Confirmation Appeal No. 404 of 2010 (unreported) where the court held as follows: "Considerations of the public interest when sentencing offenders must go beyond considerations of deterrence; there is always the consideration that the public whose interest the sentence wants to serve includes the prisoner before the court at first instance. It is in the public interest that sentences are passed which are not cruel, degrading and inhuman. Harsh or lenient sentences may not necessarily serve the public interest; they are likely to have an opposite effect. While sentences must fit the crime, the offender and the victim, they must also fit and cohere with overall sentencing goals, justice, reformation, restoration and rehabilitation. Our sentences may not be in the public interest if they only succeed in instilling crime and fail in bringing the prisoner a better person in society's continuum."

The court of Appeal in *Thomas Mwambu Wenyi v Republic* [2017] eKLR cited the decision of the Supreme Court of India in *Alistar Anthony Pereira v State of Maharashtra* at paragraph 70-71 where the court held as follows on sentencing "Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. the courts have evolved certain principles: twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstance of each case and the court must keep in mind the gravity of the crime, motive for the crime nature of the offence and all other attendance circumstances. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence, As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including Social interest and consciousness of the society for award of appropriate sentence

- 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 the present case, the circumstances fit the legal framework of the *Community Service Act* as an alternative sentence to imprisonment. He is a young person with a whole life ahead of him and a non-custodial sentence would be greatly beneficial with proper guidance and counselling. Consequently, the effective measure as recommended by the probation officer is to have the applicant serve a community service order for the remaining 1 month at Kainuk secondary school. As an addition, the probation officer has an obligation in ensuring that the applicant undergoes professional counselling to help him manage anger issues.



SIGNED, DATE AND DELIVERED AT LODWAR THIS 11TH DAY OF JUNE 2024.

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R. NYAKUNDI

JUDGE

