



**Gathama v Republic (Criminal Revision E156 of 2024)
[2024] KEHC 6625 (KLR) (7 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6625 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E156 OF 2024
RN NYAKUNDI, J
JUNE 7, 2024**

BETWEEN

VINCENT GATHAMA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of creating disturbance in a manner likely to cause breach of peace contrary to section 95(1) b of the *Penal Code*. The particulars of the offence are that on 12th October, 2023 at Duka Moja area, Turbo sub-county, Uasin Gishu County created disturbance in a manner likely to cause a breach of peace by banging the table and pouring utensils down belonging to one Regina Wangui.
2. The applicant pleaded guilty to the offence before Hon. C. Kesse on 10th October, 2023 and as a consequence, he was convicted on his own plea of guilty and sentenced to 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) and 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 favorable. According to the report, the applicant has completed two months of their six-month sentence, leaving two months remaining. Upon inquiry it was established that the offense was caused as a result of drunk driving. The applicant's family acknowledges the necessity for medical treatment and requests early release to pursue rehabilitation for the addiction. It is against this backdrop the probation officer recommended that the two remaining months be served under Community Service Order (CSO) at Maili Nne Police station. That this approach would facilitate their successful reintegration into society.



5. In determining whether to impose a non-custodial sentence, the court should consider the gravity of the offence, criminal history of the offender, character of the offender, protection of the community and the offender's responsibilities to third parties.
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 instant case presents an offence that is a perfect fit for a non-custodial sentence. I have considered the objectives of sentencing, the gravity of the offence being one of them. I am of the view that courts should encourage victim offender mediation in such cases and while at it impose non-custodial sentences. The applicant has since served 2 months in custody and with proper guidance he could equally benefit from a non-custodial sentence. Consequently, the effective measure as recommended by the probation officer is to have the applicant serve the remainder of his sentence on CSO at Maili Nne Police station for the remaining period and the Probation officer Maili Nne to effect supervision as appropriate. While at it, it is important that the applicant with the help of the probation officer should initiate victim offender mediation to avoid re-offending. Monthly reports shall be filed in court by the supervisor of the applicant through the probation officer. The essence of it is that any breach of any conditions by the applicant shall attract cancellation of the community service order and have the sentence reverted to custodial sanctions.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 7TH DAY OF JUNE 2024.

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R. NYAKUNDI

JUDGE

