



**Kibet & another v Republic (Criminal Revision E174 of 2024)
[2024] KEHC 6722 (KLR) (6 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6722 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E174 OF 2024
RN NYAKUNDI, J
JUNE 6, 2024**

BETWEEN

JOHN KIBET 1ST APPLICANT

SOLOMON KOECH 2ND APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicants were charged with the offence of assault causing actual bodily harm contrary to section 251 of the Penal Code.
2. The applicants pleaded guilty to the offence before Hon. K. Mukabi on 18th March, 2024 and as a consequence, they were convicted on their own plea of guilty and each of them sentenced to a fine of Kshs. 50,000/= and in default 6 months imprisonment.
3. The applicants have 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. On record I have a sentence review report for the 1st accused person. The report is favorable. According to the report, while in prison the 1st applicant has been working on the farm for the two months and he wishes to go back to his usual work as a driver. The report recommended that the 1st Applicant is left with two months of which he can serve on community service orders at Kilima Primary. I have not had sight of the 2nd accused’s report but relying on a prior report filed on 2nd April, 2024 and given that the circumstances of the case are similar, I am of the view that he can benefit from a non-custodial sentence.



- 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. The applicants have since served 2 months in custody and with proper guidance they could equally benefit from a non-custodial sentence. The remaining period is four months and not 2 months as suggested by the report. Consequently, the effective measure is to have the applicants serve the remainder of their sentence on CSO at Kilima primary for the remaining period. Monthly reports shall be filed in court by the supervisor of the applicants through the probation officer. The essence of it is that any breach of any conditions by the applicants shall attract cancellation of the community service order and have the sentence reverted to custodial sanctions.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 6TH DAY OF JUNE 2024.

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R. NYAKUNDI
JUDGE

