



**Malingumu v Republic (Criminal Revision E148 of 2024)
[2024] KEHC 6624 (KLR) (6 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6624 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E148 OF 2024
RN NYAKUNDI, J
JUNE 6, 2024**

BETWEEN

JOSEPHAT MALINGUMU 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.
2. The applicant pleaded guilty to the offence before Hon. D. Mikoyan on 22nd February, 2024 and as a consequence, he was convicted on his own plea of guilty and sentenced to 3 years 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 Probation sentence report on record. It is reported that while in custody, the applicant was carrying out farm work. The prison authorities have nothing negative to say about him. His family and local administrators are willing to be part of the re-integration process. It is indicated that the applicant regrets his actions and the said words were never intended to harm his sister in-law. He is remorseful and pleads for forgiveness. The Probation officer recommended that the applicant should serve probation orders for a period of 1 year and 9 months. That his recommendation underscores the importance of rehabilitation and community support in the criminal justice system, especially when considering the circumstances of individual with familial responsibilities.
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 circumstances of the case reveal of a person who has anger issues that need to be addressed. Besides that, I believe that victim offender mediation should be encouraged even as he seeks to serve a non-custodial sentence. The short period he has been in custody has shaped his character in different ways and to this end, he could greatly benefit from a non-custodial sentence.
7. From the analysis of the facts and in considering the probation report, I am of the considered opinion that the applicant ought to benefit from a non-custodial sentence given that he is a suitable candidate for reintegration. The applicant is therefore placed on probation for period of 1 year, within which period the probation officer should assist in ensuring that the applicant has managed his anger issues. It is necessary that during the period under review while the applicant is serving probation sentence, quarterly reports be filed in court by the probation officer to capture the elements of restorative justice in this case.

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

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R. NYAKUNDI

JUDGE

