



**Ezekon v Republic (Criminal Revision E029 of 2024)  
[2024] KEHC 8407 (KLR) (10 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8407 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL REVISION E029 OF 2024  
RB NGETICH, J  
JULY 10, 2024**

**BETWEEN**

**NOAH EZEKON ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant Noah Ezekon was charged with the offence of Grievous Harm contrary to section 234 of the Penal Code. The particulars of the charge were that the Applicant on the 11<sup>th</sup> day of December, 2022 at about 2030Hrs at Kampi Wakulima village Marigat Location in Baringo South Sub-County within Baringo County, unlawfully did gravious harm to Samuel Lobenyoi.
2. The Applicant pleaded not guilty to the charge and the matter was set down for full trial. Upon close of hearing, the trial court delivered judgment on 31<sup>st</sup> day of January,2024 finding the applicant guilty of the offence, convicted him and imposed a fine of Kshs.100,000/= in default to serve 5 years imprisonment as from 6<sup>th</sup> March,2023.
3. The Applicant has now approached this court vide a notice of motion Application filed in court on the 8<sup>th</sup> April,2024 brought under the provisions of Section 4 Cap 63 of the Laws of Kenya seeking to be allowed to have the remaining term of his sentence to non-custodial sentence.
4. The Application is supported by the annexed affidavit sworn by the Applicant. He avers that he was apprehended on 6<sup>th</sup> March, 2023 and charged with the offence of grievous harm contrary to section 234 of the Penal Code, tried, convicted and sentenced to serve 5 years imprisonment.
5. He states that he has reconciled with the complainant and the complainant wishes there was a way he could withdraw the complaint. He further avers that he is a first offender with no criminal records and has a family who solely rely on him since his wife has passed on and his children are adversely affected by his imprisonment. He further avers that he is reformed, repentant and has been rehabilitated and



learnt useful carpentry skills. Further that he has turned to God and he is now a new soul, has been baptized and has attended Way of Peace Program (WAPE) a program which teaches to live in peace with other despite the diversities.

6. When the matter came up for hearing on the 9<sup>th</sup> April, 2024, the Applicant reiterated his averments in his affidavit that his prayer is to be granted a non-custodial sentence for the remainder of his term. He stated that he has been in prison for a period of 1 year 4 months and is remaining with 1 year to complete his sentence by July, 2026.

### **Response by State**

7. The prosecution counsel Ms. Ratemo urged court to call for social inquiry report. On the 11<sup>th</sup> June, 2024, she submitted that she had perused the social inquiry report and had no objection to the revision of the sentence.

### **Social Inquiry Report**

8. From the social inquiry report, the applicant's father passed on in the year 2022 due to old age and the mother is currently receiving medication in Mombasa over eye ailment. From the report, the applicant's two brothers indicated that the victim is their mid born brother who is still very bitter and living in fear over what the applicant did to him. They added that they have severally tried to talk to the victim with a view of reconciling them and initially it proved futile but as a family they have met and agreed to forgive the applicant.
9. From the report, the applicant is aged 40 years old and was married and blessed with two children but his wife died in the year 2019. The children are currently at Kampia Moto with his sister-in-law. He remarried the second wife but before his arrest, she relocated back to his parents.
10. Home reports indicate that the inmate was under the influence of alcohol and he forced his way into the victim's compound and attacked him with a panga thereby causing him grievous harm. He then went underground for a couple of months before he was apprehended, charged and subsequently convicted. The victim who is a brother to the applicant confirmed that he has reconciled with the applicant and he is not opposed to him being granted a non- custodial sentence.
11. The local administrations together with the village elder said the applicant was always under the influence of alcohol and was troublesome and a difficult person to handle. They however confirmed that they participated in the family meeting and confirmed that the victim who is applicant's brother has forgiven him and they are willing to facilitate his rehabilitation within the community. They are not opposed to the applicant serving non-custodial sentence for the remaining period.

### **Determination**

12. The application herein invokes the revisional jurisdiction of this court as provided under Article 165 (6) of *the constitution* and section 362 as read with section 364 of the *criminal procedure court*. The provisions give this court powers in appropriate cases, to review and vary any orders, decision or sentence passed by the trial court if the court was satisfied that the impugned order, decision or sentence was illegal or was a product of an error or impropriety on the part of the trial court. If the court was so satisfied, the law mandated it to make appropriate orders to correct the impugned order, decision or sentence and align it with the law.



13. The objectives of sentencing are outlined in the 2023 [Judiciary of Kenya Sentencing Policy Guidelines](#) at page 15, paragraph 4.1 as follows:

“Retribution: To punish the offender for his/her criminal conduct in a just manner.

Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.

Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.

Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims’, communities’ and offenders’ need and justice demands that these are met. Further, to promote a sense of responsibility through the offender’s contribution towards meeting the victims’ needs.

Community protection: To protect the community by incapacitating the offender.

Denunciation: To communicate the community’s condemnation of the criminal conduct.”

14. From the social inquiry report filed, it is confirmed that the complainant/victim and the applicant who are brothers have reconciled. The victim and the local administration are not opposed to applicant serving non-custodial sentence for the remaining period and the local administration have committed to participate in reintegration of the applicant. I also take note of the fact that the applicant’s two children whose mother passed on in the year 2019 have no parent to take care of them and continued imprisonment of their father will prolong their suffering.
15. In view of the above and the fact that the applicant took advantage of imprisonment and learnt skill of carpentry and biblical teachings, it would be in the interest of justice to allow the applicant to serve the remaining sentence while in the community as he will add value to the community besides supporting his family.
16. Final orders: -
1. Application for revision of sentence is hereby allowed.
  2. The applicant to serve probation sentence for the remaining period of sentence.

**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 10<sup>TH</sup> DAY OF JULY 2024.**

.....

**RACHEL NGETICH**

**JUDGE**

In the presence of:

- CA Elvis/Komen.

- Applicant present.

- Ms. Ratemo for State.

