



**Ekai alias Sudi v Republic (Criminal Revision E130 of 2024)
[2024] KEHC 8357 (KLR) (9 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8357 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL REVISION E130 OF 2024
RN NYAKUNDI, J
JULY 9, 2024**

BETWEEN

SAMMY EKAI ALIAS SUDI 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-five thousand and in default 9 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. The report indicates that the applicant was drunk at the particular time of the offence which made him to make decisions that ended up making him commit actions that were against the law. The Probation officer further stated that the applicant is married and has one kid and has been involving himself in casual jobs to support his family. He was drunk at the time of the offence and was also trying to defend himself therefore ending up injuring the victim but is remorseful and asks for forgiveness. With these facts, the probation officer recommended that the applicant be placed on 3 months' Community Service at Lodwar Probation Office.



5. The court in imposing a non-custodial sentence is required to take into account the following factors: Gravity of the offence, Criminal History of the offender, Character of the offender, protection of the community and the offender's responsibility to third parties.
6. In addition, 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. I am of the considered view that the circumstances of this case from the onset called for a non-custodial sentence to help the Applicant go through guidance and counselling on managing his anger issues. I believe a non-custodial sentence would be greatly benefit the applicant 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 a period of three months at Lodwar Probation Office for purposes of guiding him on managing his anger issues. The probation officer has an obligation in ensuring that the applicant undergoes professional counselling to help him manage anger issues. Monthly reports shall be filed in court by the supervisor of the applicant through the probation officer. The essence of it is to achieve the effectiveness of this non-custodial sentence and 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.
8. It is so ordered.

SIGNED, DATE AND DELIVERED AT LODWAR THIS 9TH DAY OF JULY 2024.

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R. NYAKUNDI

JUDGE

Representation:

Mr. Yusuf for the state

