



REPUBLIC OF KENYA



KENYA LAW
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**Shimbia v Republic (Criminal Revision 209 of 2024)
[2024] KEHC 10871 (KLR) (17 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10871 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION 209 OF 2024
DR KAVEDZA, J
SEPTEMBER 17, 2024**

BETWEEN

BONIFACE NAMAI SHIMBIA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This file was brought before me for the decongestion exercise pursuant to the Chief Justice's memo dated 7/12/2022, which provides that inmates who are serving three (3) years imprisonment or less, or those serving long sentences but have a balance of three (3) years or less may be considered for non-custodial sentences.
2. I have gone through the file and noted that applicant was convicted by the trial court for the offence of Rape contrary to section 3(1) (a) as read with 3(3) of the *Sexual Offences Act* No. 3 of 2006. He was sentenced to serve 10 years imprisonment.
3. A Probation Report was filed with respect to the Applicant, indicating that the Applicant has served only three years of his sentence.
4. According to the said report, the applicant has been receptive to rehabilitation programs and is ready to serve a non-custodial sentence. He has expressed remorse and regret for his criminal life, and recognises the harm caused by his actions.
5. However, despite the findings in the probation report being in favour of the applicant release, the Applicant is yet to serve a majority of his sentence, neither does he fit under the category for those eligible for non-custodial sentences pursuant to the above-mentioned Chief Justice's memo dated 7/12/2022.
6. The Applicant still has more three years left to serve.



7. I therefore find that the Applicant is not eligible for a non-custodial sentence and decline to release him for a non-custodial sentence.
8. The file shall be returned back to the Lower Court for safe custody.
Orders accordingly.

RULING DELIVERED THIS 17TH DAY OF SEPTEMBER 2024.

D. KAVEDZA

JUDGE

