



**Cherogony v Republic (Miscellaneous Criminal Application
E009 of 2024) [2024] KEHC 11815 (KLR) (3 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 11815 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
MISCELLANEOUS CRIMINAL APPLICATION E009 OF 2024**

RB NGETICH, J

OCTOBER 3, 2024

BETWEEN

MATHEW CHEROGONY APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Mathew Cherogony was charged in the trial court with the offence of threatening to kill contrary to section 223(1) of the *Penal Code*. The particulars of the offence were that the accused on the 17th day of October, 2023 at Sachangwany village in Koibatek Sub-county within Baringo County, without lawful excuse while armed with a knife uttered words, “Nitakuua”, threatening to kill Christine Jepkemoi Cherogony.
2. The Applicant pleaded guilty to the charge before the trial court; he was convicted on his own plea of guilty and sentenced to serve 4 years imprisonment. He has now approached this court for resentencing. He filed mitigating grounds where he states that he is a sole bread winner of his young family with two children as their mother is not able to take care of them. He prayed to be allowed to join the free society and further help his young family.
3. When the matter came up for hearing on the 18th July, 2024, the applicant informed the court that he was charged with the offence of threatening to kill and he has been in prison for 9 months. He prayed for a non-custodial sentence. This court called for social inquiry report.

Social Inquiry Report

4. From the report, the applicant is aged 40 years old. He sat for KCSE and obtained mean grade of x- and thereafter started engaging in casual jobs as well as doing small scale farming. He sired two children with his wife but they are now separated and the children are being taken care of by their grandmother. His mother and siblings related well and supported the applicant despite him being an



alcoholic. His siblings say despite being alcoholic, the applicant was hardworking and he related well with other members of the society. He has no history of criminality.

5. The applicant regrets threatening his mother and says he has since reconciled with her. He is remorseful and prays for leniency from this court. The victim who is the applicant's mother confirmed that the applicant has apologized to her and upon deliberation with her other children, they decided to forgive him but with the condition that he shall relocate to his father's farm in Solai where he will live with his brother. The victim urges this court to grant the applicant non-custodial sentence. The victim's children are willing to support the applicant in his journey of reformation.
6. Members of the community who were interviewed indicated that the applicant was a hardworking young man in the community but was addicted to alcohol and due to alcoholism, he depended on his mother and whenever he lacked, he resorted to insulting and threatening his mother. They confirmed that they have reconciled.

Determination

7. The application herein invokes the revisional jurisdiction of this court which gives the 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. The above is the import of Section 362 as read with Section 364 of the *Criminal Procedure Code*.
8. In view of the above, I have considered sentiments from the victim who is the applicant's mother, the siblings and community members. They all attribute the offence herein to alcoholism by the applicant. The family have resolved to relocate the applicant to another parcel of land and his siblings are willing to support him reintegrate into the society. The applicant is remorseful and has taken steps to apologize to his mother who is ready to accept him back and has made arrangements to relocate him to Solai where he will settle with his brother.
9. In view of the above, I find it appropriate to review the applicant's sentence to non-custodial sentence as community-based rehabilitation will allow him to take care of his two children who are now being taken care of by their grandmother.
10. Final Orders: -
Applicant to serve probation sentence for the remaining of sentence imposed by the trial court.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 3RD DAY OF OCTOBER 2024.

RACHEL NGETICH

JUDGE

In the presence of:

CA Karanja.

Ms. Omari for state.

Applicant present.

