



**Kamarinyang v Republic (Criminal Revision E114 of 2024)
[2024] KEHC 12950 (KLR) (25 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12950 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL REVISION E114 OF 2024
RN NYAKUNDI, J
OCTOBER 25, 2024**

BETWEEN

MOSES EKAI KAMARINYANG APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Representation:

Mr. Onkoba for the state

1. The applicant was charged with the offence of creating disturbance in a manner likely to cause a breach of peace contrary to section 95(1)(b) 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 fifteen thousand and in default 6 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 has urged the court to consider the sentence review report on record and grant him a non-custodial sentence. The report is positive. The circumstances of the offence as per the report are that the applicant was under the influence of alcohol when he entered the compound shouting and singing thus creating disturbance among the neighbors and people who were around there at that moment thus leading to his arrest. According to the report, the applicant is remorseful and owns up the offence. During the social inquiry the local administration considered the inmate has a good and reformed person while in person.



5. The Probation officer recommended that the applicant serves a community service for a period of 4 months at Katilu primary school.
6. 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.
7. Additionally, the *Community Service Orders Act* equally 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.
8. The present case presents facts which would have been a perfect fit for a non-custodial sentence however, I am of the view that the applicant has since served a sentence that is commensurate to the charge in question. 9. Having gone through the record, and conscious of the objectives of sentencing, I am persuaded that the applicant has learned a lesson for the duration served in custody. The sentence be and is hereby reviewed to the period already served. The applicant shall be set at liberty, unless he is otherwise lawfully held.

SIGNED, DATE AND DELIVERED AT LODWAR THIS 25TH DAY OF OCTOBER 2024.

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R. NYAKUNDI

JUDGE

