



**Kimuge v Republic (Miscellaneous Criminal Application  
E010 of 2024) [2024] KEHC 11865 (KLR) (3 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 11865 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDAMA RAVINE  
MISCELLANEOUS CRIMINAL APPLICATION E010 OF 2024**

**RB NGETICH, J**

**OCTOBER 3, 2024**

**BETWEEN**

**PAUL KIMUGE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant Paul Kimuge was charged in the lower court with the offence of threatening to kill contrary to section 223(1) of the *Penal Code*. The particulars of the offence was that the accused on the 7<sup>th</sup> day of February,2024 at around 1000hours at Kipsogon village in Mogotio Sub-county within Baringo County without lawful excuse threatened to kill Dinna Kopkato by using a panga and a rungu also uttering words, “kabla wewe hujaingia kwa shimo hatuwezi pona kwa hii boma”.
2. The Applicant denied the charge and after trial, he was convicted and sentenced to serve 2 years imprisonment. He stated that he is the sole bread winner of his younger family with two children who rely on him. He states that he has approached the complainant who is willing to withdraw the charges.
3. on the 18<sup>th</sup> July,2024 when the matter came up for hearing, the Applicant stated that he has been in prison for 5 months now. This court called for social inquiry be done and the report filed. The social inquiry report was filed on the 16<sup>th</sup> September,2024.

**Social Inquiry Report**

4. From the report, the Applicant is 39-years old. He sat for K.C.S.E and attained a mean grade of x (Minus) but did not further his education due to financial constraints in the family during that period. He then took up farming and he was doing farming up until he was imprisoned. He is married with 2 young children; his father is sickly suffering from stroke. He hails from a humble background where his family depends mostly on casual work and farming.



5. Social inquiry revealed that, the prisoner has not been relating well with his mother since he is an alcoholic and there is a history of criminality within the family as most of his siblings are alcoholics. Further, the offender has previously been problematic to the family by causing a breach of peace and selling household items belonging to his parents but the cases were dealt with out of court.
6. The prisoner understands the offence is serious. He states that on the fateful day, his brother (co-accused) had been instructed by the parents to relocate to another place within the same piece of land and he helped him carry his belongings to his new destination but the brother who is the co-accused did not have money to pay him and they decided to sell household goods making their mother angry. He says he was drunk and he cannot clearly remember what happened later on but just found himself being arrested by the police. He suspects that he must have uttered threatening words to his mother. He pleads for mercy from the court and promises to ask for forgiveness from his mother who is the victim.
7. The family members had a meeting to deliberate on the issue of the prisoner on 19<sup>th</sup> August, 2024 and they unanimously agreed to forgive the applicant and give him a chance to amend his ways. The victim who is the offender's biological mother stated that what offender and his co-accused did to her was unthinkable. She however stated that since the offender has sought forgiveness, she pleads with the court to grant his son a non-custodial sentence and expressed concern for the applicant's children who dropped out of school and stated the applicant's wife relocated to her parent's home.
8. The local administration stated that the family has been having issue since the prisoner and the co-accused have been causing a breach of peace to the family and are alcoholics and the Applicant's mother has severally reported related incidences all involving the offender. He further stated that the applicant has been taking advantage of his father's sickness and ignoring any warnings from his mother. He however stated that the family briefed him on their latest deliberations concerning the Applicant. He hoped that the prisoner has learnt his lesson and would come out of prison a changed person.
9. From the report, the root cause is the issue of land; the applicant and his brother who was his co-accused were influenced by their peers to demand for a share of the land from their parents. The parents have agreed to sell a portion of the land and one of the two brothers so as to separate them.
10. On the 17<sup>th</sup> September, 2024, when the matter came up for hearing, the prosecution counsel Ms. Omari submitted that the social inquiry report was favorable as it indicates that the parties have reconciled.

### **Determination**

11. 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.
12. 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' needs and justice demand 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.”

13. The victim herein was the mother of the applicant. I have considered sentiments of the family of the applicant who include the mother who is the victim herein. They all say the applicant has not been of good conduct. They have been troublesome in the family despite the fact that their father is sickly having suffered stroke. From the report, the conflict between the applicant and his brother who is his co accused on one hand and his parents on the other hand is motivated dispute over allocation of family Land. from the report, the conflict was fueled by alcoholism on part of the applicant and his brother who were incited by his peers towards demanding their share of family land. From the report, the family have made and agreed on way forward in handling the issue. They are all not opposed to the applicant being granted non-custodial sentence for the remaining period of sentence. The victim's change of heart is influenced by the desire to unite her family and take care of the children of the applicant whose mother relocated to her parents' home and the children have dropped out of school.
14. Reconciliation was confirmed by local administration. In view of the above, I am inclined to revise the applicant's remaining sentence.

**Final Orders: -**

- 15 Applicant to serve probation sentence for the remaining period of sentence imposed by the trial court.

**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 3<sup>RD</sup> DAY OF OCTOBER 2024.**

.....

**RACHEL NGETICH**

**JUDGE**

In the presence of

CA Karanja.

Ms. Omari for state.

Applicant present.

