



**Kimuge v Republic (Miscellaneous Criminal Application
E011 of 2024) [2024] KEHC 11923 (KLR) (3 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 11923 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
MISCELLANEOUS CRIMINAL APPLICATION E011 OF 2024**

**RB NGETICH, J
OCTOBER 3, 2024**

BETWEEN

JAMES KIMUGE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant James 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 were that the accused on the 7th day of February, 2024 at around 1000 hours 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, “kabila wewe hujaingia kwa shimo hatuwezi pona kwa hii boma”.
2. After trial, the applicant was found guilty, convicted and sentenced to serve 2 years imprisonment. He prays for non-custodial sentence on ground that he is the sole bread winner of his young family with six children. He avers that the complainant is willing to withdraw the charges. When the matter came up for hearing in court on 18th July, 2024, the Applicant stated that he has been in prison for 5 months now. This court called for social inquiry to assist in determining whether the remaining sentence can be revised.

Social Inquiry Report

3. From the report, the applicant is a 43-year-old. He sat for K.C.S.E and attained a mean grade of C (plain) but did not further his education due to financial constraints in the family during that period. He was partly employed as a security officer at Kabarak University. After the contract ended, he went back home and has been doing casual work while supplementing it with farming. He is married with six children. His wife does farming and runs a small grocery business at the nearby center.



4. Social inquiry reveal that the applicant has not been relating well with his mother due to alcoholism on his part. Most of his siblings are alcoholics and the applicant 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. The victim however confirmed that they have talked as a family and agreed to forgive him for the sake of his children.
5. The Applicant understands the offence is serious. He states that on the fateful day, his brother who was co-accused had been instructed by the parents to relocate to another location within the same parcel of land. He helped the brother carry his belongings and later his brother informed him he did not have money to pay him for work done and he decided to sell some of the household items to get money to pay the applicant after which they went to drink and on coming back, their mother questioned them for selling household goods. He says he cannot recall what happened thereafter but he found himself in police custody and was later charged. He says the time he has spent in custody has taught him a lesson and he prays for leniency. He says he has sought forgiveness from his mother and she has forgiven him.
6. The family members stated that they have forgiven the Applicant for the sake of the children who are all school going and they have organized to relocate the applicant together with his children to a farm away from the victim and also away from peers who have been influencing him negatively.
7. The family members had a meeting to deliberate on the issue of the prisoner on 19th August, 2024 and they unanimously agreed to forgive the applicant and give him a chance to mend 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. She 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 issues since the prisoner and the co-accused have been causing a breach of peace to the family and are alcoholics. He says 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 relocate one of the two brothers so as to separate them.
10. On 17th 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 demands 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. Together with his brother who was the co-accused in the trial court, 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 by 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 land 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 for the interest of the applicant's children. Reconciliation was confirmed by local administration. In view of the above, I am inclined to revise the applicant's remaining sentence.

Final orders: -

14. 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 3RD DAY OF OCTOBER 2024.

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RACHEL NGETICH

JUDGE

In the presence of:

* CA Karanja.

* Ms. Omari for state.

* Applicant present.

