



REPUBLIC OF KENYA



KENYA LAW
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**Kinyua v Republic (Criminal Revision E247 of 2022)
[2023] KEHC 17877 (KLR) (Crim) (23 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17877 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL REVISION E247 OF 2022**

K KIMONDO, J

MAY 23, 2023

BETWEEN

PATRICIA KINYUA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was convicted by the lower court for threatening to kill contrary to section 223 (1) of the *Penal Code*. She was sentenced to jail for 6 years.
2. She now prays for revision vide a Notice of Motion presented to the High Court on September 22, 2022. I called for the original records of the lower court in Kibera Chief Magistrates Criminal Case Number 202 of 2020.
3. On April 26, 2023 I heard the applicant and learned counsel for the respondent. The applicant conceded that she never lodged an appeal against the findings of the lower court. She is thus properly before the High Court in this revision. She does not contest her conviction either: Her request is for review of the sentence to a non-custodial one on the ground that she has reformed in prison and received counselling on managing her anger.
4. I take the following view of the matter. The applicant is a first offender. The prayer for a no-custodial sentence is not new. At her sentencing, she had pleaded with the lower court for it. She made a detailed plea in mitigation emphasizing that she was remorseful and was ailing. A pre-sentence report was not conclusive on the suitability of the sentence. There was also a victim impact statement before the court. The learned trial magistrate found that that the offence called for a deterrent sentence.



5. So much so that I cannot fault the trial court on the sentence. It was well within the law and the penal provision allowed imprisonment for up to 10 years.
6. The applicant was in remand custody from her date of arrest on February 15, 2020. She was sentenced on March 22, 2022; the sentence to run from the date of her arrest. She has thus been behind bars for 3 years and 2 months now. The remainder of the sentence is now roughly 2 years and 8 months. She is repentant and has undergone counselling on anger management. She says she quit the relationship that made her threaten the lawyer (complainant) whose only sin was acting for the applicant's spouse. I think she has reflected on her conduct and learnt a painful lesson.
7. In all the circumstances of this case, I am inclined to temper justice with some mercy by reducing the sentence to the period already served. The upshot is that the applicant shall be released forthwith unless otherwise lawfully held.
8. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF MAY 2023.

KANYI KIMONDO

JUDGE

Ruling read virtually on Microsoft Teams in the presence of: -

The applicant (in person).

Ms. Oduor for the respondent instructed by the office of the Director of Public prosecutions.

Mr. E. Ombuna, Court Assistant.

