



REPUBLIC OF KENYA



Mutai v Republic (Revision Case E464 of 2022) [2023] KEHC 3864 (KLR) (4 May 2023) (Ruling)

Neutral citation: [2023] KEHC 3864 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
REVISION CASE E464 OF 2022**

HM NYAGA, J

MAY 4, 2023

BETWEEN

SAMUEL MUTAI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant, Samuel Mutai was charged with two counts: -
Count 1: Threatening to kill contrary to section 223(1) of the *Penal Code*.
Particulars: on March 5, 2022 at Karandit in Kuresoi South Sub County within Nakuru County without lawful excuse uttered word and used a sword to the complainant. “nitakuuwa” translated to I will kill you. Threatening Laisha Chepkorir.
Count 2: Assault causing actual bodily harm contrary to section 251 of the *Penal Code*.
Particulars: on the March 6, 2022 at Karandit Village in Kuresoi South Sub-County within Nakuru County unlawfully assaulted Victor Ngerichi thereby occasioning him actual bodily harm.
2. The applicant pleaded not guilty to both offences and the matter went into full trial. On August 16, 2022 he was found guilty and sentenced to 5 years and 2 years’ imprisonment respectively.
3. To date the Applicant has spent only 8 months in Prison.
4. Section 223(1) of the *Penal Code* states that Any person who without lawful excuse utters, or directly or indirectly causes any person to receive, a threat, whether in writing or not, to kill any person is guilty of a felony and is liable to imprisonment for ten years.
5. Section 251 of the *Penal code* states that any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour and is liable to imprisonment for five years.



6. The order before this court is for revision. The trial magistrate did call for a pre-sentence report, which was not favourable to the applicant. The court then imposed the custodial sentence. The sentence meted by the subordinate court is lawful and as such there are no justifiable grounds to interfere with the same.
7. The only consideration which was left out by the trial court was the application of section 333(2) of the *Criminal Procedure*(CPC) since the applicant was in custody throughout the trial, having failed to raise the bail terms set by the court. Section 333(2) of the *Criminal Procedure Code*, states as follows:
 - (2)) “Subject to the provisions of section 38 of the *Penal Code* (Cap. 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code. Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody”.
8. Applying the said section, I review the orders of the trial court only to the extent that the applicant’s sentence shall commence on March 7, 2022, when he was first remanded in custody.

DATED, SIGNED & DELIVERED AT NAKURU THIS 4TH MAY, 2023.

H.M. NYAGA

JUDGE

In the presence of:

C/A Jeniffer

Ms Murunga for state

Applicant (At Rumuruti) - Absent

