



REPUBLIC OF KENYA



**KENYA LAW**  
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**Chelibei v Republic (Criminal Revision E470 of 2024)  
[2024] KEHC 15191 (KLR) (3 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15191 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E470 OF 2024  
RN NYAKUNDI, J  
DECEMBER 3, 2024**

**BETWEEN**

**CALEB CHELIBEI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

Representation:

Mr. Mugun for the state

1. The applicant was charged with the offence of grievous harm contrary to section 234 of the Penal Code. The particulars of the offence are that on the night of 22<sup>nd</sup> July 2024 and 23<sup>rd</sup> July 2024 at Kamukunji Estate, Kibulgeny location in Soy Sub-County within Uasin Gishu County unlawfully did grievous harm to Wycliffe Kibitok.
2. The applicant entered a guilty plea for the offense, resulting in his conviction. The court imposed a fine of Kshs. 60,000, with a default sentence of one year's imprisonment. In determining the sentence, the court specifically noted that the victim harbored significant resentment toward the applicant, leading to the conclusion that a non-custodial sentence would be inappropriate given the circumstances.
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 seeks review of the sentence imposed by the trial court. The applicant wishes to be considered for a non-custodial sentence. I have reviewed the record and the mitigating factors advanced by the applicant at the trial court. While there remains understandable bitterness from the victim regarding the applicant's actions, I note that the period of custody has served as a significant



deterrent. The applicant's behavior and reflection during this time suggest that rehabilitation would be better served through a non-custodial sentence that allows for continued monitoring while enabling reintegration into society

5. 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.
  - f) Children in conflict with the law: - non- custodial orders should be imposed as a matter of course in cases of children in conflict with law, except in circumstances where, in light of the seriousness of the offence coupled with other factors, the court is satisfied that a custodial order is the most appropriate.
6. A review of the record shows circumstances that would have been a perfect fit for victim-offender mediation. From the above analysis and in considering the circumstances of the offence, I am of the considered opinion that the applicant ought to benefit from a non-custodial sentence given that he is a suitable candidate for reintegration. There is need however that victim offender-mediation be undertaken under the leadership of the probation officer to effectively deal with the underlying issues between the applicant and the victim. If need be, the probation officer to engage a professional mediator to convene a meeting to humanize the elements of hunger for both the victim and the offender. It is therefore necessary that during the period under review while the applicant is serving probation sentence, quarterly reports be filed in court by the probation officer to capture the elements of restorative justice in this case.
7. It is so ordered.

**SIGNED, DATE AND DELIVERED AT ELDORET THIS 3<sup>RD</sup> DAY OF DECEMBER 2024.**

.....

**R. NYAKUNDI**

**JUDGE**

