



**Donny v Republic (Criminal Revision E462 of 2024)  
[2024] KEHC 15157 (KLR) (3 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15157 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E462 OF 2024  
RN NYAKUNDI, J  
DECEMBER 3, 2024**

**BETWEEN**

**STEPHEN SIAI DONNY ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

**Representation:**

Mr. Mugun for the state

1. The applicant was charged with the offence of threatening to kill contrary to section 273 of the Penal Code. The particulars of the offence are that on the 20<sup>th</sup> February, 2024 at around 21:30 Hrs. at Langas estate, Langas sub location, Pioneer location within Kapseret Sub-County without lawful excuse uttered the following words: “Naweza kukukata vipande na niende ama uende uniletee polisi ishirini ndio nitoke hapa” threatening to kill Florence Ausa.
2. The applicant entered a guilty plea for the offense, resulting in his conviction. The court imposed a 3-year sentence. The probation officer at the trial court stated that the applicant is 24 years old and single. That though he has no previous criminal records, he has been a bother to his family while under substances. The family was at then against his grant of non-custodial sentence saying the life of the victim will be at risk. The probation officer noted that the applicant needs to be kept from bad company for some time to try if he will change his behavior. The applicant was sentenced on 12<sup>th</sup> March, 2024 and he still has some time remaining to serve his sentence to completion.
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. It is indicated that the applicant admitted to the offence as he always arrived at home while under the influence of alcohol and Bhang and quarreled with his paternal grandmother.
5. While cognizant of the victim's lingering anguish regarding the applicant's threatening conduct, this court observes that the period of incarceration has served as a substantial deterrent. The applicant's demonstrated reflection and behavioral transformation during custody suggests that the interests of justice and rehabilitation would be better served through a carefully structured non-custodial sentence. Such an approach would enable close monitoring while facilitating the crucial process of reintegration into society.
6. In evaluating the appropriateness of a non-custodial disposition, this court is guided by several fundamental principles. First, the proportionality of punishment must be weighed against the gravity of the offense. Second, consideration must be given to the offender's criminal history, noting particularly that first-time offenders merit special consideration for non-custodial alternatives. Third, the character and demonstrated remorse of the offender must be assessed, as these factors significantly impact rehabilitation prospects. Fourth, the court must balance community protection against the benefits of supervised reintegration. Fifth, the broader impact on dependents and third parties must be considered. Finally, special consideration must be accorded to young offenders, for whom non-custodial sentences often prove more effective in preventing recidivism.
7. Upon careful review of the record, this court finds compelling circumstances that strongly favor victim-offender mediation. The underlying dynamics of this case, particularly the family context and substance abuse factors, present an opportunity for meaningful reconciliation and healing through structured counselling. The court hereby directs that comprehensive victim-offender mediation be undertaken under the supervision of the probation department. The assigned probation officer is authorized to engage a qualified professional mediator to facilitate discussions aimed at addressing the root causes of the conflict and fostering mutual understanding between the parties.
8. Consequently, this court hereby orders that the applicant's sentence be modified to an 18 months probation period. During this period, the probation officer shall submit quarterly progress reports to this court detailing the status and outcomes of victim-offender mediation sessions, the applicant's compliance with substance abuse treatment programs, progress in family reconciliation efforts, and any other relevant factors affecting rehabilitation. The applicant is directed to strictly comply with all conditions that shall be set by the probation officer. The court further emphasizes that any breach of the probation conditions shall result in an immediate review of this order, which may lead to reinstatement of custodial sentence.
9. It is so ordered.

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

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**R. NYAKUNDI**

**JUDGE**

