



**Tanui v Republic (Criminal Revision E262 of 2024)
[2024] KEHC 15183 (KLR) (3 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15183 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E262 OF 2024
RN NYAKUNDI, J
DECEMBER 3, 2024**

BETWEEN

BETHWEL KIPNGETICH TANUI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

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 27th January, 2024 at Jabali area, Jabali sub-location in Soy sub-county within Uasin Gishu County without lawful excuse uttered “Leo mama paka nitakuwa.” Threatening to kill Eunice Tanui.
2. The applicant entered a guilty plea for the offense, resulting in his conviction. The court imposed a 2-year sentence. The probation officer indicated that the offender admitted and took responsibility for the offence. He indicated that he committed the offence because he was angry and drunk. That he was angry because his parents denied him to sell a piece of land to support his financial plans.
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 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 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.

5. 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.
6. 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.
7. Consequently, this court hereby orders that the applicant's sentence be modified to the remainder of the term 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.
8. It is so ordered.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 3RD DAY OF DECEMBER 2024.

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R. NYAKUNDI
JUDGE

