



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Githinji v Republic (Criminal Revision E291 of 2025)
[2025] KEHC 17688 (KLR) (1 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 17688 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E291 OF 2025
RN NYAKUNDI, J
DECEMBER 1, 2025**

BETWEEN

PAUL WAINAINA GITHINJI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged with threatening to kill contrary to Section 223(1) of the Penal Code. The brief facts of the particulars are that on the 30th day of August 2025 at Ndabaranach village, in Soy Sub-County within Uasin Gishu while armed with a jembe, without lawful excuse uttered threatening words, “wewe mwanamke umenizoea sana. Leo nitakuua. Unalala na bibi yangu kila wakati.” To his mother Ruth Wakonyo.
2. In Count II: Creating disturbance in a manner likely to cause breach of peace contrary to Section 95(I) (b) of the Penal Code. The facts are that on the 30th day of August 2025 at Ndabarnach village Soy Sub County within Uasin Gishu County created disturbance in a manner likely to cause a breach of peace by saying “Uyu mwanamke umenizoea sana leao nitakuua” to ruth Wakonyo.
3. The Applicant pleaded guilty and was sentenced to serve 1 year imprisonment on 2nd October 2025.
4. The Applicant has approached this Court vide an application for review of sentence under Section 362 as read with Section 364 of the CPC.
5. As a consequence of that the Probation Officer filed a presentence review report which had the following components:

Current Home And Personal Circumstances:

My Lord, the inmate is 46-year-old. He is the son to the late James Githinji and one Ruth Githinji who is a complainant in the case. He hails from Moi's Bridge location in Soy Sub-



County. He is the 7th born in a family of 9 siblings. The inmate is married to one Caroline Nelima and together sired three children namely Ryan, Allan and Ruth. It has taken the intervention of the family members for the inmate's wife to remain in marriage. He attended Matunda primary school and joined Kapsabet Boys for his secondary school education. He passed well and joined Moi University and graduated with a degree in Bachelor of Science Forestry in 2009. The family indicated the inmate is a violent person and takes alcohol and drugs, which is believed to be the main cause of the crime committed. They are not ready to welcome home. The victim who is his mother is against the inmate early release. She indicated that since the inmate went to prison the family has become peaceful. The local administration has no objection for his early release only if the inmate is ready to change. The inmate stated that he is of good health and no one visits him in prison.

Prison Assessment, Rehabilitation, And Re-integration:

The inmate is involved in farming at the prison. The prison records indicate that the inmate is fit for release. The family and community are not willing to be part of rehabilitation and more so the complainant who is the inmate mother vehemently objects his early release. The complainant is still bitter and fears for her life.

Offenders Attitude Towards Non-custodial Measures

The inmate is remorseful and takes responsibility for his offence and regrets his action. The Inmate is ready to serve the community if the court considers him for early release.

Recommendations:

My Lord, the inmate is unsuitable for an early release.

Decision

5. The principles of sentencing and all its aims are well articulated in the Sentencing Policy Guidelines of the Judiciary 2023. The application of it must be construed within the constitutional imperatives under the Bill of Rights commonly referred to as Chapter 4 of *the Constitution*. One of the key pillars in sentencing is the provisions under Article 25 which states inter alia that the rights and fundamental freedom from torture and cruel, inhuman or degrading treatment or punishment should underpin exercise of discretion of a Judicial Officer when contemplating imposition of a sentence against a particular offender who has been found guilty of a specific crime.
6. The contemporary criminal justice in Kenya is driven mainly by the retributive or deterrent objective. There is less emphasis on restorative justice or rehabilitation. Models of justice are commonly divided into three main categories: retributive, deterrent and restorative. Retributive justice focuses on the moral dimension of justice. It emphasized the notion that perpetrators of a crime or those who fail to abide by laws of customary norms “deserve” to be punished for their wrongdoing. On the other hand, a deterrent view of justice focuses on the instrumental dimension of justice. It emphasizes that punishment for wrongdoing is necessary to prevent further violations of the law and to signal the boundaries of socially acceptable behavior. Finally, the restorative view of justice focuses on the need to rebuilt or restore relationships and/or socio-economic status. The form of justice includes scope for compensation as a way of correcting wrongdoing and achieving justice.
7. The Superior Courts have delved into the issue of sentencing which is one of the core functions of trial Courts within our Criminal justice system. In the *Fatuma Hassan Salo v Republic* [2006] eKLR Makhandia J as he then was remarked; Thus, the court should be guided by evidence and sound legal



principles when it comes to the arrival of its decision. He also stated that the court should put into consideration all the relevant factors and exclude the irrelevant factors. In addition, the Court in *Peter M. Kariuki v Attorney General*, [2016] eKLR also made the following observations; That a Court has been granted discretion in a manner that is both judicial and reasonable – not upon caprice or personal opinion. This has been emphasized in the judgments of other cases to be useful to the appeal court when analyzing the judgment of a Lower Court.

8. The Sentencing Guidelines of 2023 provide a foundation and a reference point for Judges and Magistrates in exercising discretion. The Policy Guidelines provides for a three-step approach that is to be applied by a trial Court in individualizing specific sentences befitting specific offences.
 - a. Sentencing options – The Court is meant to consider the sentencing options that are provided for by the statute where the crime falls under. This means a reference to the statute that provides for the crime in question.
 - b. Custodial v non-custodial – For the statutes that provide for both custodial and non-custodial options, the guidelines give principles that are to be considered in analyzing which of these two orders would be the most appropriate.
 - c. The third step is twofold, the choice that is to be considered depends on which option was made in step 3.
 - i. For a non-custodial sentence, the guidelines have also provided a policy through which the Courts discretion is to be applied in choosing the most appropriate non-custodial sentence and eventually mitigation and aggravating circumstances are expected to be put into consideration
 - ii. For imprisonment, the same applies, that the guidelines have provided for a policy to be used in determining how long the term of imprisonment should be after the consideration of aggravating and mitigating circumstances.
9. A proper recrafted legal framework is needed to meet the challenging task of appropriate sentencing given the disparities on the various sanctions of what one considers to be the same offence with the prescribed sentence by the Legislature.
10. In the instant case, the circumstances of the offence as deduced from the record involves a son and a mother and from the recommendations this is not a suitable case for a non-custodial sentence. As of now therefore, there are risk factors which negative the release of the convict to a home-based rehabilitation unless and until the complainant and the convict submit themselves to a victim- offender mediation. The application for review of sentence is declined under Section 382 of the Criminal Procedure Code.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 1ST DAY OF DECEMBER 2025

.....

R. NYAKUNDI
JUDGE

