



REPUBLIC OF KENYA



**Wamalwa v Republic (Criminal Revision E338 of 2025)
[2025] KEHC 17683 (KLR) (1 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 17683 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E338 OF 2025
RN NYAKUNDI, J
DECEMBER 1, 2025**

BETWEEN

DAVID WAMALWA 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 21st day of September 2024 at around 1400hrs at Vumilia Village Soy Sub County within Uasin Gishu County, without lawful excuse uttered “ukilalal leo hapa mpaka asubui ntakuua” words threatening to kill Agnes Nafula Masinde.
2. The Applicant pleaded guilty and sentenced to serve four (4) years’ imprisonment on 13th November 2024.
3. The Applicant has approached this Court vide an application for review of sentence under Section 362 as read with Section 364 of the CPC.
4. As a consequence of that the Probation Officer filed a presentence review report which had the following components:
 - A. Sources Of Information:

The information was gathered through interviews with the inmate, offender's family members, complainant, and the local administration.
 - C. Particulars Of The Offence:

As per the charge sheet
 - D. Current Home And Personal Circumstances:



The inmate was born in 1982. He is the son to the late Peter Masinde and one Agnes Masinde from Soy Sublocation. He is the 9th born in a family of 13 siblings. He attended Kapenguria primary and dropped in class 7 in his own volition. He later ventured into casual labour. The inmate is married to one Eunice Wamalwa and together. The family indicated the inmate is a violent person and takes alcohol, 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, she has experienced some peace. 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.

D. Prison Assessment, Rehabilitation, And Re-integration:

The inmate is involved in harvesting firewood 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 is against his early release. The inmate has not reconciled with the complainant or asked for forgiveness.

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.

D. Recommendations:

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

Decision

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.
6. The *Community Service Orders Act* empowers this Court to order an offender to perform unpaid community service in lieu of imprisonment. This sentencing option is available where the offence carries a maximum term of imprisonment not exceeding three years, or where the Court deems it appropriate that any portion of a longer sentence be served through community-based sanctions. The Act recognizes that certain offenders benefit more from structured rehabilitation within the community than from continued incarceration, particularly where there exists a strong support system and genuine prospects for reformation.
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. I have reviewed the record based on the above principles including the social inquiry report and the same is non-responsive in so far as releasing the Applicant to serve a non-custodial sentence. The application is therefore dismissed under Section 382 of the Criminal Procedure Code. Orders accordingly.

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

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R. NYAKUNDI
JUDGE

