



REPUBLIC OF KENYA



KENYA LAW
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**Ireri v Republic (Criminal Revision E407 of 2025)
[2026] KEHC 6137 (KLR) (6 May 2026) (Ruling)**

Neutral citation: [2026] KEHC 6137 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CRIMINAL REVISION E407 OF 2025
RM MWONGO, J
MAY 6, 2026**

BETWEEN

CYRUS NJERU IRERI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of threatening to kill contrary to section 223(1) of the Penal Code. Upon conviction, he was sentenced to pay a fine of Kshs.100,000/= or in default, to serve 3 years imprisonment.

The Application

2. Through notice of motion dated 09th September 2025, the applicant is seeks the following orders:
 1. That this court has jurisdiction to hear and determine this application;
 2. That this court has jurisdiction to order for non-custodial sentence in its powers of review of a sentence considering that the applicant has, all along, been remorseful and his defense can attest to this fact;
 3. That this Honourable court be pleased to grant the prayers sought which invoke the provisions of section 4 of the *Probation of Offenders Act*;
 4. That the applicant has used his period of incarceration well by engaging in productive rehabilitative courses which have equipped him with skills that would benefit his family and the society;



5. That the applicant is a first offender, a family man, remorseful, truthful and a rehabilitated person who is ready to rejoin the community as a productive member and an inspiration to the young people in the society.
3. In his supporting affidavit the applicant states that he has a constitutional right which can be exercised under section 4 of the *Probation of Offenders Act*. He urged the court to allow the application because he has since reformed and he has enhanced his skills while in prison through trainings. He produced some of the certificates from the trainings he has attended.

Parties' Submissions

4. The application was canvassed by way of written submissions.
5. In his submissions, the applicant relied on section 4(1) and (2) of the *Probation of Offenders Act* which provides for conditional release of offenders under the circumstances defined therein. He urged the court to consider such circumstances of the case like age of the offender and his character. He stated that he is now 72 years old with no prior criminal record. He submitted that he has been the sole caregiver of his children since his wife died in 1984. That he has reformed through his stay in custody and now he is ready to reintegrate back into society. He urged the court to exercise its discretionary powers in his favour.
6. The respondent submitted that for section 4 of the *Probation of Offenders Act* (POOA) to apply, certain factors must be considered. These factors are: offender's age or background, home environment, health or mental condition, seriousness of the offence, mitigation or other special circumstances. The High Court may only make such an order under the POOA at the time of sentencing after conviction while the subordinate court may make such an order with or without entering a conviction. Based on this, the respondent argued that this provision can only be invoked in the High Court at the time the court was trying the matter. That the prayers should have been sought before the trial court. It argued that this court lacks jurisdiction to entertain the application.

Issue for Determination

7. The issue for determination is whether the application has merit.

Analysis and Determination

8. This Court agrees with the respondent it is only where a matter is tried before the trial court, that a probation order may be made before or after conviction but before sentencing. This depends on whether the trial court is the High Court or a subordinate court. For the purposes of this case, Section 4(1) of the *Probation of Offenders Act* provides:

“Where a person is charged with an offence which is triable by a subordinate court, and the court thinks that the charge is proved but is of the opinion that, having regard to age, character, antecedents, home surroundings, health or mental condition of the offender, or to the nature of the offence, or to any extenuating circumstances in which the offence was committed, it is expedient to release the offender on probation, the court may—

- (a) convict the offender and make a probation order; or
- (b) without proceeding to conviction, make a probation order, and in either case may require the offender to enter into a recognizance, with or without sureties, in such sum as the court may deem fit.”



9. From this provision, it is clear that the factors for consideration for probation can only be taken into account before an offender is sentenced. In this case, the applicant had already been sentenced, which sentence the applicant was in the process of serving in default of a fine imposed. Therefore, a probation order cannot be made at this stage, as the cited provision does not apply.

Disposition

10. In the result, the application must, and is hereby dismissed.
11. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 6TH DAY OF MAY, 2026.

R. MWONGO

JUDGE

Delivered in the presence of:

Applicant Present in Court

Ms. Mwaniki for the Respondent

Francis Munyao - Court Assistant

