



REPUBLIC OF KENYA



**Chesaina v Republic (Criminal Revision E065 of 2024)
[2025] KEHC 1210 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1210 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL REVISION E065 OF 2024
RB NGETICH, J
FEBRUARY 27, 2025**

BETWEEN

RICHARD KORIR CHESAINA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Richard Korir Chesaina was charged with the offence of Threatening to kill contrary to section 223(1) of the Penal Code. The particulars being that the accused on the 2nd day of November, 2023 at about 0800hrs at Atiar Sub-location within Baringo North Sub- County willfully and unlawfully threatened to kill Ezekiel Kipsoi using a bow and an arrow.
2. The applicant denied the charge and the matter was set down for full trial. Upon conclusion of the matter, by judgement delivered on 16th April, 2024 the trial court found the applicant guilty, convicted and sentenced him to 4 years imprisonment.
3. The Applicant filed application vide Kabarnet H.C Criminal Revision No E044 of 2024 seeking to have period served in remand considered as per provisions of Section 333(2) of the Criminal Procedure Code. This court considered the application and allowed the same by ordering that the period served in remand to be computed in the sentence imposed by the trial court.
4. The applicant has now approached this court seeking review of sentence to non-custodial sentence for the remaining period. He states that he is remorseful, first offender, has entirely reformed and rehabilitated. He promises to be a role model in the society if allowed to be integrated in the society, He says the complainant has forgiven him; that he is a family man and after his incarceration, his wife left the children and are now under the care of their grandfather who is old and unable to take care of them. The court directed that a social inquiry report to be filed.



Social Inquiry Report

5. From the report, the applicant dropped out of school in class 7 due to his own personal will and lack of support from his parents. He is married and blessed with four children. The Applicant used to run a food kiosk for a living at community level. While in custody, he has been able to complete teachings on Celebrate Recovery Africa, Healing hearts transforming Africa and Christian programs and at the moment he is at the industry department training in carpentry.
6. Social inquiry reveal that the applicant is a known troublesome person in the neighborhood and he is said to have stormed into the victim's home on the material day and shot him with an arrow for reporting him for offence of assault which is pending before court vide criminal case No E648/2023. Fortunately, the arrow missed the victim by a whisker.
7. The applicant admits the charge and attribute it to alcohol. He states that he has reconciled with the victim. The victim who is applicant's cousin confirmed that he has reconciled with the accused and is not opposed to revision of sentence.
8. The village elder indicated that the applicant has been troublesome for a long period. He confirmed that reconciliation took place and the applicant's children are under the custody of their grandfather who is struggling to provide basic needs to the children. He is not opposed to the applicant being rehabilitated within the community so that he can take care of his children.

Determination

9. The application herein invokes the revisional jurisdiction of this court which gives the court powers, in appropriate cases, to review and vary any orders, decision or sentence passed by the trial court if the court was satisfied that the impugned order, decision or sentence was illegal or was a product of an error or impropriety on the part of the trial court. If the court was so satisfied, the law mandates it to make appropriate orders to correct the impugned order, decision or sentence and align it with the law. The above is the import of Section 362 as read with Section 364 of the *Criminal Procedure Code*.
10. The objectives of sentencing are outlined in the 2023 *Judiciary of Kenya Sentencing Policy Guidelines* at page 15, paragraph 4.1 as follows:
 - Retribution: To punish the offender for his/her criminal conduct in a just manner.
 - Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
 - Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.
 - Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.
 - Community protection: To protect the community by incapacitating the offender.
 - Denunciation: To communicate the community's condemnation of the criminal conduct."
11. The victim herein has forgiven the applicant. This was confirmed by the local administration. Both the victim and the local administration are not opposed to the applicant being released on non-custodial sentence. They confirmed that the applicant's children are suffering under the care of their grandfather



and they support the applicant's prayer for rehabilitation within the community. In view of the above, I am inclined to allow the applicant's prayer for non-custodial sentence.

12. Final orders: -

Applicant to serve probation sentence for the remaining period of sentence.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 27TH DAY OF FEBRUARY 2025.

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RACHEL NGETICH

JUDGE

In the presence of:

- Ms. Bartilol for State.

- Applicant.

- Court Assistants – Elvis/Momanyi.

