



REPUBLIC OF KENYA



**Kalale v Republic (Criminal Revision E068 of 2024)
[2025] KEHC 1218 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1218 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL REVISION E068 OF 2024
RB NGETICH, J
FEBRUARY 27, 2025**

BETWEEN

APUKE KALALE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Apuke Kalale was charged two counts of offences. Count 1 is the offence of threatening to kill contrary to Section 223(1) of the [Penal Code](#).
The particulars of the charge were that the applicant on the 9th day of November, 2023 at around 0320 Hours at Chemolingot opposite D.C.C office in Tiaty West within Baringo County without lawful excuse uttered words, ‘huna bahati leo nitakumaliza’ “toka nje nikuue” threatening to kill Peter Kalale.
2. Count 2 is the offence of creating disturbance contrary to Section 95(i) (b) of the [Penal Code](#).
The particulars of the charge were that on the day of 9th November, 2023 at around 0340 hours at Chemolingot opposite D.C.C office in Tiaty West Sub-County within Baringo County created disturbance in a manner likely to cause breach of peace by throwing stone to Peter Kalale.
3. The applicant pleaded guilty to the two counts and he was convicted on his own plea of guilty. Upon conviction, the Prosecution informed the court that the accused has no previous criminal records and should be treated as a first offender. In mitigation, the applicant sought to pardon stating that he was drunk when the incident occurred.
4. On 26th January, 2024, the trial court found that the accused was not suitable for noncustodial sentence as he was a repeat offender having committed offences against his immediate family members and sentenced to serve 3 (three) years imprisonment.



5. Prior to this application, the applicant filed another application for revision of sentence on 8th April, 2024 *vide* Criminal Revision No. E014 of 2024 but upon this court perusing the probation officer's report found him not suitable for noncustodial sentence and declined to revise his sentence but was given liberty to reapply at a later date.
6. The applicant has now approached this court with a similar application seeking to serve the remaining period of sentence on probation. He regrets the offence and undertakes not to reoffend. When the matter came up on 11th November, 2024, he said he is remaining with 1 year to serve the sentence of 3 years. The court called for a second social inquiry report.

2nd Social Inquiry Report

7. From social inquiry report, the applicant sat for Kenya Certificate of Primary Education in the year 2009 but did not proceed with his education due to his own personal will. He started herding family cattle. He is married with three children. At the time of his arrest, he was working as a boda boda rider within the community. While in prison, he is training as a carpenter.
8. The Applicant's father who is the victim herein is opposed to review of sentence as he still fears for his life. He states that the applicant had been sentenced for causing previous harm to him before; and while at home, the applicant has a habit of selling family property, excessive alcohol consumption and creating disturbance at family level. The father is still very bitter towards the Applicant and he prefers that he completes his custodial sentence as he has not changed character despite several counseling sessions at family level. The Applicant's sister stated that since incarceration of the applicant, there has been peace at the family level and economic development has taken place. She is opposed to review of sentence.
9. The applicant attributes the offence to alcoholism. He stated that his father went to where he was chewing khat (miraa) with his friends and accused him for his lost phone. He said he was harassed and labeled a thief in the presence of his peers and in the evening after drinking, he went to question his father for embarrassing him in the presence of his friends and it led to the threats. He stated that he has reconciled with his father who is the victim herein and prays for noncustodial sentence to enable him restart afresh. Social inquiry however reveals that they have not reconciled.
10. The victim who is the father is opposed to the Applicant's prayers stating that he is still bitter over what the inmate did to him. Secondly, the Applicant should complete his sentence because in the first offence he forgave him but within a period of less than six months he threatened to kill him and lastly, he has not reconciled with the victim.
11. The local administration indicated that the Applicant is well known to him and his major challenge is excessive use of alcohol and drugs. He added that this is not his first offence and in all the cases he has been attacking the victim who is his father. He is opposed to his early release on ground that the father has not forgiven him and he still has some fears towards the Applicant. He was of the view that the Applicant should just complete his sentence and completes his carpentry training so as to gain skill to use in future.

Determination

12. 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 mandated 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.

13. 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."

14. From the social inquiry report, this is not the first time the applicant attacked the victim who is his father. Even though the applicant says he has reconciled with the victim, sentiments given by people interviewed reveal that they have not reconciled. The victim is still bitter and he fears the Applicant might harm him upon release. The local administration opposed review of sentence and confirmed that he has not reconciled with the victim who is his father and if released, his father will live in fear. I therefore find that the applicant is not suitable for custodial sentence.

Final orders: -

15. The applicant's prayer for revision of sentence is hereby dismissed.

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

