



REPUBLIC OF KENYA



KENYA LAW
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**Kipkemoi v Republic (Criminal Revision E067 of 2024)
[2025] KEHC 1211 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1211 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL REVISION E067 OF 2024
RB NGETICH, J
FEBRUARY 27, 2025**

BETWEEN

DENNIS KIPCHIRCHIR KIPKEMOI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Dennis Kipchirchir Kipkemoi was charged with the offence of Threatening to kill contrary to Section 223(1) of the *Penal Code*.

The particulars of the charge were that the accused on the 6th day of June, 2024 at about 11:00 a.m. in Kisonei area of Baringo Central Sub-County within Baringo County willfully and unlawfully threatened to kill Elijah Kipkorir Rono by uttering the words to wit, “*leo nitakukatata na nikuweke kwa Jeneza*”.
2. The accused denied the charge and the matter was set down for full trial. After 3 prosecution witnesses had testified, the accused informed the court that he wished to change plea. On the 9th July, 2024 charges were read over to the accused where he pleaded guilty and the court proceeded to convict him on his own plea of guilty. Upon being convicted on his own plea of guilty, the court proceeded to sentence him to serve 2 years imprisonment on 29th July, 2024
3. The applicant has now approached this court vide an application seeking for review of the sentence and to have the time of 2 months he spent in prison during trial to be considered as part of the sentence in accordance with Section 333(2) of the *Criminal Procedure Code*.
4. When the matter came up for hearing on the 24th October, 2024, the Applicant informed the court that he is praying that the period of 2 months that he spent in prison be considered and for the court to reduce the remaining sentence of 1 year.



5. On the 11th November, 2024, the court made an order that the period spent in remand from the date of arrest to be computed in the sentence and called for the social inquiry report to be filed before the court considers whether to revise the sentence.

Social Inquiry Report

6. From the report, the applicant dropped out in the year 2018 due to his own personal will and negative peer influence. In the year 2019 he was involved in farming and did casual jobs within the community. He is single with no dependent. Social inquiry reveals that the applicant has been troublesome for a long period and has received several Alternative Dispute Resolutions (ADR) at family level and community level without change in character. He attributes his behavior to excessive alcohol consumption and desire for quick money without engaging in any economic activity and excessive alcohol consumption. The father is opposed to review of sentence to noncustodial sentence and prefers that he completes his custodial sentence as from his assessment, his character has not fully changed.
7. Circumstances of the offence are that his father had given out a cow to graze at the neighbor's farm. The applicant while drunk went to the neighbor's farm wanting to take the cow and threatened the neighbor who reported to police and the applicant was arrested. The applicant stated that he has not reconciled with the victim.
8. The victim is opposed to review of sentence on ground that the applicant has been troublesome for a long period of time and he has received several counseling sessions and ADR within the community without change in character. He confirmed that he has not reconciled with the Applicant and if released on non-custodial sentence, the applicant will live in fear.
9. The local administration indicated that the Applicant has been troublesome for a while due to excessive alcohol consumption. He confirmed that the applicant has received several ADR and counseling at the community level without change in character. He indicated that the Applicant's criminality is due to desire for quick desire of money. He opposed review of sentence to non- custodial sentence on ground that his own safety at community level is not good as he not reconciled with the victim who happens to be his immediate neighbor.

Determination

10. 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*.
11. I have also considered the social inquiry report. The report indicates that the Applicant's major challenge is excessive alcohol consumption and the desire for quick money and he has been troublesome for a long period of time. His father, the victim and the local administration opposed the Applicant's prayer for non-custodial sentence on the ground that he has not reconciled with the victim and for his own safety, the local administration prefers that he completes his sentence.
12. 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.”

13. Having considered the social inquiry report, specifically the sentiments of the victim, the community/local administration, I find the Applicant not suitable for a non-custodial sentence. The application for review is hereby declined.

Final Orders: -

14. The applicant's prayer for review of sentence is hereby dismissed.

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

RACHEL NGETICH

JUDGE

In the presence of:-

- Ms. Bartilol for State.

- Applicant.

- Court Assistants – Elvis/Momanyi

