



REPUBLIC OF KENYA



KENYA LAW
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**Elkana v Republic (Criminal Revision 42 of 2024)
[2024] KEHC 3146 (KLR) (19 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3146 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION 42 OF 2024
DR KAVEDZA, J
MARCH 19, 2024**

BETWEEN

JOSPHAT NYABONGA ELKANA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged and after a full trial convicted for the offence of preparation to commit a felony contrary to section 308(1) of the *Penal Code* Cap, 63 Laws of Kenya. He was sentenced to serve 3 years imprisonment. He has now filed an application seeking sentence review.
2. The application is premised on the grounds that he has undergone various rehabilitative programmes and has since reformed. In addition, he is remorseful. He is the sole breadwinner in his family of one wife and two children. He urged the court to grant a non-custodial sentence or in the alternative consider the time served as appropriate
3. I have considered the application, the submissions by the applicant and the applicable law. Section 329 of the *Criminal Procedure Code*, gives judges and magistrates, in appropriate cases to consider mitigation and mete out a sentence that fits the offence committed despite another sentence being provided for under the Act in which the offence is prescribed. In that regard, I find that the sentence meted out was lawful and in learned trial magistrate discretion. Although the sentence imposed by the trial court was lawful, I find that the same was harsh and excessive.
4. Consequently, I hereby substitute the sentence of 3 years imprisonment meted by the trial court with a community serve order of two years at the Chief's Office.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 19TH DAY OF MARCH 2024



D. KAVEDZA
JUDGE

