Kariuki v Republic (Criminal Revision E011 of 2024)
[2024] KEHC 5213 (KLR) (29 April 2024) (Ruling)

Neutral citation: [2024] KEHC 5213 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CRIMINAL REVISION E011 OF 2024

RN NYAKUNDI, J

APRIL 29, 2024

BETWEEN

DANIEL KARIUKI ..... APPLICANT

AND

REPUBLIC ..... RESPONDENT

(Being an application for Revision of Sentence in Criminal Case No. E059 of 2024 Before Hon. C. Kesse (PM) dated 5th January 2024)

RULING

Coram: Before Justice R. Nyakundi

Mr. Mugun for the State

1. The applicant was charged, tried, convicted and sentenced to thirty months imprisonment on two counts of threatening to kill contrary to section 223(1) of the *Penal Code* & malicious damage to property contrary to section 339(1) of the *Penal Code*.

2. The applicant has approached this court, seeking for a review of the sentence owing to his remorsefulness, transformation and rehabilitation during his time in custody. Significantly, the complainant, his mother supports his application stating that

> "I believe in the power of redemption and rehabilitation. My son is not defined by his past actions but by his capacity for growth and change"

3. Traditionally, the Criminal Justice System in Kenya focuses on the fact that a crime is an offence against the State and not the victim. There is a presumption that in Article 157(6)&(7) of the *Constitution*, the State steps into the shoes of the victim and prosecutes the offender. In the end, the State focuses on punishing the offender to either pay a fine to the State or commits the offender to a prison term. There

is very little or no attention to the needs of the offender or the victim. Therefore, the jurisprudence around the sentence scheme in Kenya stems from the belief that any person convicted of any offence if admitted or found guilty upon a full trial, the consequence of it is a deterrence sentence.

4. Given the facts of this case, victim-offender mediation could have been navigated by the learned trial Magistrate to take into account the best interest of the victim, the offender and the community. In my view, the present criminal justice system is unsatisfactory to many respects; first it leaves the accused and the complainant and even members of the society dissatisfied with the outcome of the criminal cases disposed of by trial court. Why do I say so? The pre-dominant doctrine guiding exercise of

5. The Court therefore ignores the other contributory factors in sentencing policy on reparation, reformation, rehabilitation and the effective use of parity and proportionate canons which are so fundamental in our criminal justice system. It also focuses on the State than the harm against the individual or personal rights before it. I consider crime as a violation against individual rights and the State is a vehicle under Article 157 (6),(7),(9),(10) &(11) of the *Constitution* to guarantee and protect those rights by prosecuting the wrong doers as provided for in our penal system for the interest of justice. There is need for trial courts to focus on rehabilitation and re-integration of offenders into the community where such factors are responsive. This is one case where the justification for victim-offender mediation could have played a major role in having the applicant to serve a non-custodial sentence than the last resort option of a custodial sentence.

6. The empirical evidence in this matter shows that the offender has been rehabilitated and is reformed, ready for re-integration into the society. The complainant on the other hand has since forgiven her son and is ready to welcome him back home to give him guidance for him to become a positive force in society.

7. As a consequence, the sentence of the learned trial Magistrate stands reviewed by this Court for the applicant to be released immediately and in the words of Jesus in the Holy Book, the applicant is hereby ordered to "go and sin no more."

GIVEN UNDER MY HAND AND SEAL THIS 29TH DAY OF APRIL 2024.

R. NYAKUNDI

JUDGE