



**Ndugi v Republic (Criminal Revision E225 of 2023)  
[2024] KEHC 3898 (KLR) (22 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3898 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
CRIMINAL REVISION E225 OF 2023  
GL NZIOKA, J  
APRIL 22, 2024**

**BETWEEN**

**JAMES MUNYUA NDUGI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was arraigned on 15<sup>th</sup> August, 2022 before the Chief Magistrate’s court charged vide Chief Magistrate’s Criminal Case No. E1142 of 2022 with the offence of; threatening to kill contrary to section 223(1) of the *Penal Code* (herein “the Code”).
2. The particulars of the charge are that, on the 11<sup>th</sup> day of August 2022 at CIS-Mara Guest House in Maai Mahiu Township in Naivasha Sub-county within Nakuru County the applicant without lawful excuse threatened to cut Simon Kamau while using a panga.
3. He pleaded guilty to the charge, the facts were read to him and he confirmed the same to be correct consequently he was convicted on his own plea of guilty and sentenced to serve five (5) years imprisonment.
4. By an undated document described as a memorandum of sentence review, the applicant seeks for sentence review on the grounds therein reproduced here below: -
  - a. That I am a first offender.
  - b. That, I pray that this honourable court allows me to spend the remaining period of my sentence under Community Service Order (CSO) or set me at liberty.
  - c. That, I am remorseful of my offence and I have learnt to be a law abiding citizen.
  - d. That, I am from a poor family background.



- e. That, I did not give proper mitigation during my sentencing and hence would like to be present during the hearing and determination of this application.
  - f. That, I humbly beg this court for leniency and reduce my five (5) year sentence.
  - g. That, I am not appealing against the sentence and conviction but applying for review of sentence.
5. The application is supported by his affidavit in which he states that, he was charged with the offence of threatening to kill contrary to section 223 (1) of *the Code*. He pleaded guilty and was convicted and sentenced to serve a term of imprisonment of five (5) years.
  6. However, the respondent filed grounds of opposition dated; 15<sup>TH</sup> April, 2024 which states that: -
    - a. That the applicant was charged, convicted and sentenced, for the offence of threatening to kill contrary to section 223(1) of the *Penal Code*, to serve a custodial sentence of 5 years imprisonment
    - b. That section 223(1) of the *Penal Code* provides for a maximum sentence of 10 years imprisonment
    - c. That the sentence meted against the applicant was lenient since it is only a half of the available sentence of 10 years
    - d. That, therefore the sentence meted to the applicant therefore is lawful and fair given the circumstances.
    - e. That the applicant has not served a substantial part of sentence and as such the prayers sort will not be in interest of justice
    - f. That the applicant had a right of appeal which he has not opted to utilize at the moment.
  7. The court further ordered for a pre-sentence report which was dated and filed on 17<sup>th</sup> April, 2024, and which the court has considered
  8. The report dated 31<sup>st</sup> August, 2022 which was received prior to the sentence is negative. It shows that, the applicant is not a first offender, he has been in Prison before, and he abuses drugs and has been a nuisance. The community and family do not support a non-custodial order.
  9. Further, the report dated 17<sup>th</sup> April, 2024 is not favourable as it notes that the applicant appeared delusional during the interview and recommends that he be taken for a mental assessment. Therefore this is not a suitable matter for sentence review and the application is dismissed.
  10. It is so ordered

**DATED, DELIVERED AND SIGNED ON THIS 22<sup>ND</sup> DAY OF APRIL 2024**

**GRACE L. NZIOKA**

**JUDGE**

In the presence of:-

The applicant present virtually

Mr. Abwajo for the respondent

Ms Ogutu: Court Assistant

