



**Chepkoskei v Republic (Criminal Revision E359 of 2024)
[2024] KEHC 14964 (KLR) (29 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14964 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E359 OF 2024
RN NYAKUNDI, J
NOVEMBER 29, 2024**

BETWEEN

EDNA CHEPKOSKEI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of assault causing actual bodily harm contrary to section 251 of the Penal code. The particulars of the offence were that on 8th February, 2024 at Kapkoren village in Soy Sub-County within Uasin Gishu County, assaulted Sylvia Naliaka, thereby occasioning her actual bodily harm.
2. The applicant pleaded guilty to the offence and as a consequence, she was convicted on his own plea of guilty and sentenced to serve 1-year imprisonment.
3. The applicant has approached this court pursuant to sections 357,362,364& 382 of the Criminal Procedure Code as construed with Article 50(2) (p) & (q) as conjunctively read with Article 50(6) (a)&(b) of *the Constitution*.
4. The applicant seeks review of the sentence imposed by the trial court. The applicant wishes to be considered for a non-custodial sentence. I have reviewed the record and the mitigating factors advanced by the applicant at the trial court.
5. In determining whether to impose a custodial or non-custodial sentence, the court is required to take into account the following factors: -
 - a) Gravity of the offence: - sentence of imprisonment should be avoided for misdemeanour.
 - b) Criminal history of the offender. Taking into account the seriousness of the offences, first offenders should be considered for non-custodial sentence.



- c) Character of the offender: - non-custodial sentence are best suited for offenders who are already remorseful and receptive to rehabilitative measures.
 - d) Protection of the community: - where the offender is likely to pose a threat to the community.
 - e) Offender's responsibility to third parties: - where there are people depending on the offender.
 - f) Children in conflict with the law: - non- custodial orders should be imposed as a matter of course in cases of children in conflict with law, except in circumstances where, in light of the seriousness of the offence coupled with other factors, the court is satisfied that a custodial order is the most appropriate.
6. A review of the record reveals hunger issues on the part of the applicant and there is need to have that addressed not only through a custodial sentence but also a non-custodial sentence with proper guidance and counselling. The significant differences which led to the commission of this offence ought to be addressed so that the threats and risks of reoffending are brought under control.
7. From the above analysis and in considering the probation report, I am of the considered opinion that the applicant ought to benefit from a non-custodial sentence given that he is a suitable candidate for reintegration. There is need however that victim offender-mediation be undertaken under the leadership of the probation officer to effectively deal with the underlying issues between the applicant and the victim. If need be, the probation officer to engage a professional mediator to convene a meeting to humanize the elements of hunger for both the victim and the offender. It is therefore necessary that during the period under review while the applicant is serving probation sentence, quarterly reports be filed in court by the probation officer to capture the elements of restorative justice in this case.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 29TH DAY OF NOVEMBER 2024.

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R. NYAKUNDI

JUDGE

