



**Cheplengin v Republic (Criminal Revision E022 of 2025)
[2025] KEHC 10325 (KLR) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10325 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL REVISION E022 OF 2025
RB NGETICH, J
JULY 17, 2025**

BETWEEN

HABRAHAM CHEPLENGIN APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Habraham Cheplengin was charged with the offence of Assault causing actual bodily harm contrary to section 251 of the *Penal Code*. The particulars of the charge were that the applicant on the 26th day of August, 2023 at about 2315 hours within Babarchun centre in Baringo North Sub-County within Baringo County unlawfully assaulted one namely Loice Teriki thereby occasioning her actual bodily harm.
2. The accused denied the charge and the matter was set down for full trial and by judgement delivered on the 13th day of March, 2025, the trial court found the accused guilty of the offence of assault occasioning bodily harm contrary to section 251 of the *Penal Code* and proceeded to convict him under section 215 of the *Criminal Procedure Code*. The accused was subsequently sentenced the accused to serve 2 years imprisonment.
3. The Applicant has approached this court vide an undated application seeking for orders of review his sentence where he prays for an alternative order of a fine or rather allow him to serve on a non-custodial sentence (probation). The applicant's grounds of mitigation are that he is remorseful, a first offender, entirely repentant, reformed and rehabilitated. He avers that he has reconciled victim who has forgiven him and she is very ready to withdraw the case and set him at liberty. That he has a young family who depend on him as a bread winner and as such will suffer a lot due to his incarceration. He states that his parents are too old and he their caretaker as well and he thus pleads for court's mercies.



4. When the matter came up before court on the 5th May, 2025, the applicant stated that his prayer is for a non-custodial sentence stating that charged with the offence of assault where he was sentenced to 2 years and he has since served 2 months and is remaining with 14 months. The court called for a social inquiry to be done and the report to be filed in court which report was filed as directed.

Social Inquiry Report.

5. From the report, the applicant dropped out of school in class six due to his own will in the year 2011. He has been working as a herder of family livestock and farming. The applicant is married with three children who are all at pre-primary level. He has a good relationship with his siblings, wife and the mother. This is his first offence and he does not use alcohol.
6. The applicant's sister indicated that the applicant committed the offence out of anger, and she prayed for the applicant to be admitted into non-custodial sentence so that he can continue taking care of his young family. She added that as a family, they have not approached the victim for reconciliation purposes.
7. The cousin prayed for his release back to the community so that he could assist his young family; on reconciliation he indicated that the victim is the wife of the applicant's uncle and therefore his aunt is a very complicated woman within the community and she will not accept their apology.
8. The applicant admits the offence as charged and sentenced but he attributes it to anger caused by the victim's practice of witchcraft which he believes caused the death of their father and other family members especially those who are in formal employment and he therefore committed the offence not knowing the consequences. He has not reconciled with the victim and he states that he will not since he fears her. He prays for non-custodial sentence so that he can continue with his parental responsibility to his young family.
9. The victim who is applicant's aunt is aged 71 years and at the time of interview, she had relocated to her parent's home at Kipsaraman area. She is still very bitter over what the applicant did to her: She said on the 13th march, 2025 the date the applicant's bond was cancelled before she could reach home, her five houses were being burnt by the applicant's brothers and cousin. Through the arson she lost most of her household properties and items. This has affected her emotionally and economically. She added that while the case was at hearing stage, the applicant's wife tried to inform the applicant to try and reconcile with her but the applicant did not want to hear that. She is opposed to the applicant's prayers on ground that she has not reconciled with him and she is still very bitter.
10. The local administrator stated that the applicant is well known to him and this is his first offence. He indicated that the applicant committed the offence out of anger and under incitement from his brother's and cousins. He added that the brothers and cousins used him to achieve their goal. He confirmed that the victim's house was burnt and the victim is currently at her parent's home.
11. He added that the applicant's family together with the cousins blame her for deaths that have occurred within the family yet the family has history of hepatitis B sickness. He was able to note that at the community level the matter of arson is with Deputy County Commissioner and they were able to hold two meetings with both families and the applicant's family agreed to compensate the victim with Ksh. 600,000/= so that she can relocate to another place but no timelines were set for compensation. He is opposed the release of the applicant at the moment noting that it would create tension and the victim will feel that she has not received justice. He prefers the applicant be released after the victim is fully compensated. The probation officer is of the view that the applicant is not suitable for sentence review at the moment but it is subject to court's discretions.



Determination.

12. 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](#).

13. In this case, the applicant has maintained that he is remorseful, reformed and rehabilitated since he has been in prison for close to 2 months now. He prays for non-custodial sentence for the remainder of his prison term.

14. 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.”

15. I have considered the social inquiry report, specifically the sentiments of the local administration who are opposed to the Applicants prayer for non-custodial sentence on ground that he has not reconciled with the victim who has not been compensated and is still bitter towards the applicant

16. Upon considering the nature of the offence committed and the fact that the applicant is still bitter as he has not been compensated for destruction of her houses which has made her stay with her parents to date, I find that it would not be appropriate to review applicant's remaining sentence to non-custodial sentence.

Final Orders: -

17. Application for review of sentence is hereby dismissed.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT ELDAMA RAVINE HIGH COURT (SUB-REGISTRY) THIS 17TH DAY OF JULY, 2025.

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RACHEL NGETICH

JUDGE

In the presence of



CA E lvis.

Ms. Omari for state.

Applicant present.

