



**Kibiwott v Republic (Criminal Revision E193 of 2025)  
[2025] KEHC 11072 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11072 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E193 OF 2025  
RN NYAKUNDI, J  
JULY 24, 2025**

**BETWEEN**

**ABRAHAM KIPKETER KIBIWOTT ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged of assault causing actual bodily harm. The brief facts are on the 8<sup>th</sup> day of April 2025 at Legebet location in Soy sub county within Uasin Gishu county Abraham Kipketer Biwott thereby occasioning her actual bodily harm. He pleaded guilty to the offence duly convicted and sentenced to 3 years imprisonment.

**Decision**

1. This application is based on the provisions of the *Criminal Procedure Code* namely Section 357, 362, 364 as read with 382. The *Constitution* also provides under Art 50 (2) (p) (q) as follows:
  - (p) to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishments for the offence has been changed between the time that the offence was committed and the time of sentencing; and
  - (q) if convicted, to appeal to, or apply for review by, a higher court as prescribed by law.
  - (3) if this Article requires information to be given to a person, the information shall be given in language that the person understands.
2. The same *Constitution* in Art 50 (6) (a) (b) expressly states as follows:

A person who is convicted of a criminal offence may petition the High Court for a new trial if-



- a. The person’s appeal, if any, has been dismissed by the highest court to which the person is entitled to appeal, or the person did not appeal within the time allowed for appeal; and
  - b. new and compelling evidence has become available.
3. This application is based on the social inquiry report dated 21<sup>st</sup> July 2025 carried out by the probation officer which contextualized the issues as follows:

Sources of information prison records, inmate families, community and the complainant

#### Current Family and Personal History

##### Family background

The inmate was born to Christopher Chemai Biwott and Pauline Chemaiyo who are both alive but separated in his early years of life. His father started another family in Aldai. Nandi county while his mother acquired a parcel of land and established a homestead at Tartar area of Soy sub county where the offender resides from. He is the sixth born in a family of seven children brought forth by his mother. The criminal history is only linked to the accused person who is said to be the black sheep of the family. His mother reported that he has settled him on 0.4 acre which is part of her acquired 1.2 acre piece.

His two siblings Simeon and Naomi when contacted held that the inmate had a history of violence directed at his own family. He has assaulted a neighbor and brother before eventually assaulting his 84 year old mother leading to this matter. They are of the opinion that his release will put the victim in danger as they share a homestead. It is our finding that the family remains opposed to his early release or any form of non-custodial measure.

##### Personal History

Our inquiry established that Abraham was born at ALdai in Nandi county. His parents separated during his early childhood years. He accompanied the mother who raised him as a single parent at Tartar village Soy Sub county. He has primary level of education having attended Kiborokwa Primary school but never joined high school. He acquired shoe-making and carpentry skills through apprenticeship and has since been practicing as a local cobbler and carpenter. He reported a history of a series of marriage union with numerous separations and at the time of his arraignment he was single with no children. His family members attributed his current marital status to aggression leading to domestic violence. His family submitted that he has previous conviction having served jail term for assaulting a neighbor. He denies drinking alcohol or ever abusing any form of intoxicating substances. During our interaction, he stated that he had developed stomach bloating problem while in custody and that he was receiving treatment. No family member had visited him in custody.

##### Prison Assesment Rehabilitation and Re-intergration

Prison authorities submitted that the inmate has not had cases of indiscipline although he exhibits lack of civility and unable to maintain calmness. He was yet to undergo any skills training. He has subscribed to Seventh Day Adventist Church for spiritual wellness.

It is our finding that his family members are opposed to his early release hence no arrangements are in place to ensure smooth re-entry and resettlement.

##### Offenders' Attitude Towards Non-custodial Sentence



The inmate is receptive to community-based court sanction and he is willing to submit to community service orders. However, he remains indifferent with his family members.

#### Conclusion

Your Lordship, the inmate in the present matter has a documented history of violence directed towards his own family members, with the most recent victim being his 84-year-old mother. He is perceived to harbor a sense of entitlement to the family's property, often at the expense of his siblings, which has significantly strained familial relations.

As a result, his siblings have consistently been denied access to their mother due to his controlling behavior. They have expressed strong opposition to his early release, stating that his incarceration has brought them a sense of relief. In their view, his continued confinement offers their elderly mother a measure of peace and may also serve as an opportunity for the inmate to reflect and possibly embrace rehabilitative values.

Local administrators have also voiced concerns, citing the absence of adequate safeguards to ensure the victim's safety should the inmate be released. They are firmly opposed to his early release at this time.

While the inmate acknowledges the ongoing tension with his siblings and confirms that no reconciliation has been achieved, he has verbally committed to maintaining peaceful conduct going forward.

#### Recommendation

My Lord, the above presentation indicates that the inmate's home environment remains unreceptive, with his family members including the victim who is his mother strongly opposed to his early release. As such, there are no willing or available supervising partners to support the successful implementation of community-based interventions. In our considered opinion, releasing the inmate at this stage, without a proper support structure to ensure peaceful co-existence, poses a potential risk to the complainant, the inmate himself, and possibly other family members.

We therefore find him not suitable for early release at this time and respectfully recommend that he continues to serve his sentence in custody.

4. The role of non-custodial sentence should underpin our penal system in which custodial sentence remains a recourse of last resort in punishing offenders. The [\*sentence policy guidelines of the judiciary 2023\*](#) provides a framework in which Judicial discretion should be exercised to arrive at a fair and proportionate sentence on individualized circumstances. The objectives and principles of sentencing are well articulated and defined as follows:
  - a. Retribution: to punish the offender for his/her criminal conduct in a just manner.
  - b. Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
  - c. Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law-abiding person.
  - d. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.
  - e. Community protection: to protect the community by incapacitating the offender.



- f. Denunciation: to communicate the community's condemnation of the criminal conduct.
  - g. Reconciliation: To mend the relationship between the offender, the victim and the community.
  - h. Reintegration: To facilitate the re-entry of the offender into the society.
5. In a documented research by Chrispinus Adenya Aben entitled Factors Influencing Success of Non-Custodial Sentence in Kenya: A Case of Kilifi District in Kilifi County 2011. He made the following observations: First and foremost, prison population around the world is increasingly placing enormous financial burdens on governments. There is growing recognition that imprisonment does not achieve some of its most important stated objectives, as well as being harmful to offenders, families and in the long term to the community (UNODC, 2006).
  6. It came out clearly from his research; Supervision is an essential component of community based correction with the primary objective of enforcing compliance with the conditions of release to minimize risk to the public and to re-integrate the offender into the law abiding lifestyle. Lax supervision and failure to deal firmly with those who persistently violate the terms of release can bring an entire system into disrepute in criminal justice. (Killinger GG and Cromwell P.F, 1990). "The law is without doubt a remedy for great evils, yet it brings with it evils of its own". (Subbrano V.C.G. 1993). There are three primary gateways in the criminal justice. The first is at the police at the initial stage of apprehension, the second is at the court after the determination of guilt and passing of a sentence and the third is the gateway to the community at the conclusion of the sentence (Johnson R, 2003).
  7. Rule 8.2 of the *Tokyo rules* on non-custodial affirm that courts or sentencing authorities may dispose of cases in any of the following ways-verbal sanctions, admonitions, reprimands and warning, conditional discharge, status penalty, economic sanctions and monetary restitution, restitution to the victim or compensation order, confiscation or expropriation, suspended or deferred sentence, probation and judicial supervision, community service order, house arrest and any other non-institutional treatment. Supervision is critical in realization of sentencing objectives. This is operationalized as poor and lax supervision leads to reconviction and abscondism. The quality and number of contacts between the offender are key in reforming, re-integrating the offender. The caseload per officer and the frequency of contacts between the officer and the probationer determines the level of intensity of supervision based on the risk category of the probationer. The community plays key role in having offenders change. Community attitude, home environment is deterministic of offender's potential to change.
  8. Time has come to re-conceptualize the effectiveness of custodial sentencing to promote a clear, fair, uniform and consistent approach by all levels of courts. A theme of any review of sentence must not lose sight of the objectives and sentencing. Am of the consider view that an effective sentence must also serve to communicate to society that justice has been done and the wrong doer punished and denounced for his or her conduct. Generally speaking over time I have been involved in the practice of law as a trier of criminal cases they is no probative evidence that the harsher, punitive or severe the sentence does provide greater marginal deterrent effects.
  9. Sentencing is a discretionary process mainly exercised by trial courts who have the advantage to appreciate the circumstances of the offence and how it applies to the sentencing objectives and principles within the regulatory framework of our *sentencing policy guideline 2023*. This court is being asked to review the custodial sentence and have it substituted with non-custodial sentence. As I appreciate the record and the impugned decision on sentence I bear in mind that this is one area of law which involves the weighing of may complex factors, it will always be possible to point to some factors which should arguably have been taken into account or left out of account; even if they should



have been, the court should not intervene unless it is convinced that this would have resulted in the decision going the other way.

10. There is a big outcry amongst our communities and society at large on the level of inconsistency, disparity, unfairness, and disproportionate verdicts on sentence being imposed by the trial courts and on even on appeal which do not reflect the sentencing objectives and principles in our policy document. As if that is not enough the letter and spirit of our sentencing scheme seems to depart from the legislatures intention and vision in the criminal administration of justice. Sentencing in Kenya ought to be fair and proportionate to the crime being prosecuted by the state as against the accused persons or defendant. These canons on fair and proportionate sentence requires that: All relevant factors of a case must be considered including the seriousness of the offence, the impact on the victim and others affected by the case, and the circumstances of the offender; Sentences should be no more severe than is necessary to achieve the appropriate purposes of sentencing in each case; Reasons for sentencing decisions must be stated as clearly and openly as circumstances permit; Sentencing decisions must be made lawfully and sentencers must have regard to any sentencing guidelines which are applicable; People should be treated equally, without discrimination; and Sentencing decisions should treat similar cases in a similar way, assisting consistency and predictability
11. I have read the record and the probation officer report I concur with the findings made on inquiry that the applicant is not fit and eligible to be released from custody so as to serve non-custodial sentence as part of the rehabilitation program. The application for review is therefore dismissed under section 382 of the CPC. It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 24<sup>TH</sup> DAY OF JULY 2025**

.....

**R. NYAKUNDI**

**JUDGE**

