



**Kivaze alias Robaa v Republic (Revision Case E115 of 2025)  
[2025] KEHC 10623 (KLR) (21 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10623 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
REVISION CASE E115 OF 2025  
RN NYAKUNDI, J  
JULY 21, 2025**

**BETWEEN**

**ROBERT KAJIRWA KIVAZE ALIAS ROBAA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged of threatening to kill. The brief facts are on the 14<sup>th</sup> day of March 2025 at Burnt Forest Trading Centre in Ainabkoi sub-county within Uasin Gishu county, without lawful excuse uttered words “Nitakukata shingo na niiweke hapa chini kila mtu aone” threatening to kill Naomi Njeri Mwaura. He pleaded guilty to the offence convicted and sentenced to a fine of 30,000 in default twelve (12) months imprisonment. He has now applied for his sentence to be reviewed and the remainder of the sentence

**Decision**

2. The record which has a bearing on review of sentence captures the personal antecedents in the following:

**Personal History.**

3. The accused was born in the year 1988 to Alfred Amukune and Elizabeth Kimani (deceased). His mother separated with his father and the accused stayed with her aunt. When he attained school going age, he was enrolled at Barut Primary school in Nakuru class 1-3 and later transferred to Lessos Primary School for class 4 & 5. Later on their family relocated to Nandi and he was enrolled to Kiptuyo Primary school whereby he dropped in class seven. The offender thereafter got a job as herds boy and later on as shamba boy in Kitale. Later on, trained on the job as a mechanic. The offender left home and ventured into mechanic works at Burnt Forest until the time of his arrest The accused is not married



### **Circumstances of the Offence**

4. The offender avers that the complainant is his girlfriend and on that day he alleges that he did not spend with her a night before and that is when the complainant became agitated and picked a whipping stick and because she was short-tempered he whipped him. The accused further alleges that the complainant had requested him that she is in ominous of a child and if he did not impregnate her, she will take him to the police station.

### **Attitude Towards the Offence**

5. He seems to be remorseless, unrepentant and heartless as per his utterances. From our social inquiry we established that the accused was convicted for 1 year for the offense of assault causing actual bodily harm via criminal case number E3320/2021 and fined Ksh5,000/1month imprisonment for criminal case number E2168/2022 respectively.

### **Views of the Victim(s)**

6. The view of the complainants was sought and he had strong objection for the offender to be given non-custodial sentences, citing previous actions which he assaulted two people and her personal safety.

### **Community's Attitude Towards the Offender and the Offence**

7. According to the people we talked to during our social investigations, described the offender as a person who does not relate well with other members of his community to wit he had previously assaulted and indeed caused Actual Bodily Harm to Joyce Wangare Mwangi and Simon Njoroge. She avers further, the offender is nuisance to the complainant work mates as he would peep in and confronts them without a cause.

### **Conclusion**

8. Your Honor, the offender before this court works as mechanic. We established that the offender truanted school due to peer group influence. The offender's aunt described the offender as humble who relates well with people. However, when we contacted the investigating officers and the complainant, they described the offender as a person who commits serious offences repeatedly. Your honor, from our social inquiry we established that the accused was previously convicted for 1 year for the offense of assault causing actual bodily harm via criminal case number E3320/2021 and fined Ksh5,000/1month imprisonment for criminal case number E2168/2022

From our investigations the offender is not repentant and therefore he is not suitable person to be subjected to a supervised non-custodial sentences

### **Recommendation**

9. Your honor, in view of the aforementioned facts, we strongly recommend that the offender is not suitable for non-custodial sentences.
10. The first principle in the sentencing scheme is that the infliction of punishment against an offender who has been convicted for committing an offence known in law is fundamentally a matter for the discretion of the trial court. The fact that in our legal system courts should as far as possible and to the wider extent enjoy the unfettered discretion in relation to sentencing is a treasured principle which all levels of courts must take cognizance either on appeal or on review of sentence. Notwithstanding the penal law, sentencing policy guidelines of the



judiciary and the entrenched case law sentencing an offender is underpinned on the canon of the individualization of punishment.

11. I have reviewed the record of the trial court bearing in mind the provisions of section 362 and 364 of the CPC as read together with Art 50 (2) (p) (q), 6 (a) (b), of the *constitution* and I find no substantial and compelling circumstances in respect to this offence to review the custodial sentence and substitute it with non-custodial sentence. The application is lost for want of merit.

**GIVEN UNDER MY HAND AND SEAL OF THIS COURT THIS 21<sup>ST</sup> DAY OF JULY 2025**

.....

**R. NYAKUNDI**

**JUDGE**

