



**Kiptoo v Republic (Criminal Miscellaneous Application  
E002 of 2024) [2024] KEHC 2359 (KLR) (5 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2359 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL MISCELLANEOUS APPLICATION E002 OF 2024**

**RB NGETICH, J**

**MARCH 5, 2024**

**BETWEEN**

**ABRAHAM KIPTOO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant was charged with the offence of Grievous Harm contrary to section 234 of the [Penal Code](#). The particulars of the charge being that the accused on the diverse dates between 1<sup>st</sup> July, 2021 and 5<sup>th</sup> August, 2021 at unknown time at [Particulars withheld] village in Tiaty Sub- County within Baringo County, unlawfully did grievous harm to a minor MK aged 12 years.
2. The accused pleaded not guilty to the charge and the matter was set down for hearing. The prosecution availed 8 witnesses in support of the charges facing the accused. The matter was determined vide a judgement delivered on the 16<sup>th</sup> August, 2022 where the court convicted the accused and proceeded to sentence him on the 23<sup>rd</sup> August, 2022 to serve 10 years imprisonment.
3. Dissatisfied with the sentence of the trial court, the convict has approached this court seeking sentence review in accordance with Article 50(2)(p)(q) of [the Constitution](#) of Kenya, 2010 and section 362 and 364 of the Criminal Procedure Code.
4. The Applicant urges this court to consider the provisions of sentencing policy guidelines, 2016 published by the Kenya Judiciary and invoke the provisions of Article 165(3) a, b and d and 258(1) of [the Constitution](#) of Kenya, 2010 and reduce his sentence.
5. The Applicant states that the sentence meted upon him is harsh and excessive; that he is a young man with a family who solely depend on him for survival and his prayer is to be allowed to serve the remaining sentence on probation.



6. A social inquiry report has been filed in court. The report indicates that in a family of 7 siblings, the applicant is the only one with history of criminal history. The applicant did not attend any school but played a role of taking care of family animals. He was married with four children but his wife remarried.
7. The applicant admits the charge and says he did not intend to injure the victim but was only disciplining him. The applicant's brother who was interviewed is not opposed to applicant serving non-custodial sentence.
8. The victim and the social worker at Sunrise Children home Kabarnet were available for interview. The victim is currently a pupil at [Particulars withheld] Primary School in grade four. The leg injured by applicant has healed well though he is still on treatment and he attends physiotherapy sessions at Baringo County Referral Hospital. The victim is still bitter and is not willing to forgive the applicant now. The victim has been going through counselling and has been staying at the children home since trial time to date.
9. The local administration opposed the inmate being released at the moment. Her views were that the inmate never cared for the victim when he realized he has injured him, he never took a step of taking him to hospital until a neighbor raised an alarm. She prefers that the applicant completes sentence so as to serve as a lesson to other members of the society.

#### **Determination**

10. I have considered sentiments of the local administration, the victim, sunrise children's home and the applicant's father. From the report, the victim who is an orphaned minor who sustained serious injury which may have been worsened by applicant's failure to take him for treatment until neighbors intervened. The applicant's act of inflicting serious injuries on the minor who was an orphan and looked up to him for care and protection was inhuman.
11. Further, the applicant's act of trying to conceal the offence compounded the problem by delaying treatment thus causing more harm to the minor. From the report, the victim has not recovered. He is still on medication and physiotherapy. The applicant was charged with offence of grievous harm which attract life imprisonment but sentence of 10 years imprisonment was imposed. In my view the sentence imposed was very lenient in the circumstances. From the foregoing, I see no merit in the application herein.
12. Final orders: -  
Application for review of sentence is hereby dismissed.

**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 5<sup>TH</sup> DAY OF MARCH 2024.**

.....

**RACHEL NGETICH**

**JUDGE**

**In the presence of:**

\* Applicant present.

\* Ms Ratemo for State.

\* E. Kibet – Court Assistant.

