



REPUBLIC OF KENYA



**Kipirgat v Republic (Criminal Revision E277 of 2023)
[2024] KEHC 4275 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4275 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E277 OF 2023
RN NYAKUNDI, J
APRIL 11, 2024**

BETWEEN

ELIAS KIBIWOTT KIPIRGAT APPLICANT

AND

REPUBLIC RESPONDENT

*(Being an application for revision of sentence in criminal case no. E220
of 2023 before hon. R. Odenyo (SPM) dated 20th February 2023.)*

RULING

1. The applicant was charged, tried, convicted and sentenced to 3 years imprisonment for the offence of assault causing actual bodily harm contrary to section 251 of the [Penal Code](#).
2. 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](#). In addition, the Court is privy to the Probation Officer's report dated 20th March 2023 which is non-responsive as against the applicant to have his sentence reviewed. One of the key highlights flows from the recommendation from the report contextualized in the following language 'the inmate's home environment is unfavorable for his return. The complainant feels that he had not learnt a lesson yet and that she has not healed from the offence'.
3. I echo the words set out in the comparative jurisprudence in *S v Immelman* 1978 SA726(A), where the Court stated that:
 - a. The general rule is that this Court must decide the question of sentence according to the facts in existence at the time when the sentence was imposed and not according to new circumstances which came into existence afterwards and, even if there are exceptions to this rule, this case does not appear to constitute such exception.



4. It is also trite that a sentence of a convict may also be reduced in circumstances where the review Court is of the view that the penalty so imposed by the trial Court and complained against is grossly disproportionate to the offence itself. The empirical evidence in this matter shows that this is a family related criminal dispute. The Probation Office alludes to the fact of the failure by the victim to submit herself to the victim-offender mediation forum. The fear is whether an early release of the convict/ applicant is likely to escalate instead of de-escalating the conflict, in so far as the community-based rehabilitation of the offender is concerned. In absence of cogent evidence that release of the applicant would be for the common good of society, I decline to exercise discretion to review the sentence as pleaded in the Notice of Motion. In terms of section 382 of the Criminal Procedure Code, the application lacks merit and is therefore dismissed forthwith.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 11TH DAY OF APRIL 2024.

.....

R. NYAKUNDI
JUDGE

