



REPUBLIC OF KENYA



KENYA LAW
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**Cheruiyot v Republic (Revision Case E397 of 2022)
[2023] KEHC 17339 (KLR) (11 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17339 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
REVISION CASE E397 OF 2022**

**HM NYAGA, J
MAY 11, 2023**

BETWEEN

JOSPHAT CHERUIYOT APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant Josphat Cheruiyot was convicted on his own plea of guilty for the offence of Assault causing bodily harm contrary to section 251 of the *Penal Code*.
2. The particulars were that on May 8, 2022 at around 1700hrs in Teret Location in Mauche, Njoro Sub County within Nakuru County, he assaulted Geoffrey Kiplangat thereby causing him actual bodily harm.
3. On May 30, 2022, he was sentenced to serve 2 years' imprisonment. The trial court had called for a pre-sentence report on the accused which found him unsuitable for a non-custodial sentence. Crucially, he was found to have had no remorse at all after attacking his own brother. His own mother expressed fears for her life, owing to the applicant's violent nature.
4. The Sentence Review Report by Samuel Ndung'u filed on August 31, 2022, also recommends that the Applicant is not suitable for a non-custodial sentence on grounds that victim expressed fear that the applicant may be a threat to his mother and his siblings. The applicant's brother stated that the applicant's relationship with other people is antagonizing and he is known to be cruel.
5. Given the above position I do find that the sentence imposed by the trial court cannot be said to be harsh or excessive. Even if the court is enjoined to take measures to decongest the prisons, I think that this is a case where I ought to act on the side of caution. It is better to be safe than sorry. The applicant needs time to reflect on his misdeeds.



6. In light of the above observations, I order that the applicant should continue serving the remainder of his sentence in custody.

DATED, SIGNED & DELIVERED AT NAKURU THIS 11TH DAY OF MAY, 2023.

H.M. NYAGA

JUDGE

In the presence of:

C/A Jeniffer

Ms Murunga for state

Applicant - present

