



**Kipngetich v Republic (Criminal Revision E111 of 2024)  
[2025] KEHC 13292 (KLR) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13292 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDAMA RAVINE  
CRIMINAL REVISION E111 OF 2024  
RB NGETICH, J  
SEPTEMBER 18, 2025**

**BETWEEN**

**NICHOLAS KIPNGETICH ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant Nicholas Kipngetich was charged with the offence of grievous harm contrary to section 234 of the Penal Code. The particulars were that on the 12th day of June 2021, at Poror village in Koibatek Sub-County within Baringo County, he willfully and unlawfully caused grievous harm to one David Kirui.
2. He initially pleaded not guilty and the prosecution called three witnesses in support of its case. However, on 22<sup>nd</sup> February 2023, when the matter came up for mention, the accused requested that the charge be read to him afresh. He then pleaded guilty and was accordingly convicted on his own plea. On 14<sup>th</sup> March 2023, the trial court sentenced him to five (5) years' imprisonment.
3. The Applicant has now approached this Court through an undated Notice of Motion expressed under section 4 of the Probation of Offenders Act, seeking that he be allowed to serve the balance of his sentence on a non-custodial sentence.
4. In his supporting affidavit, the Applicant avers that his sentence is due to expire on 14th July 2026, leaving a balance of about one year and eight months. He contends that he has served a substantial portion of the sentence, is a first offender, has no previous criminal record, and is willing to abide by the conditions of probation if released. He asserts that this Court has jurisdiction under Article 165 of the Constitution to entertain his application.
5. When the matter came up for hearing on 21st May 2025, the Applicant reiterated his plea to be considered for a non-custodial sentence.



## Social Inquiry Report

7. From social inquiry report, the applicant dropped out of school in Standard Seven, later engaging in farm work and boda boda business. He is married but has no children. Prior to arrest, he abused alcohol.
8. The report reveals that the Applicant and the complainant are distant relatives. The incident arose from a confrontation after the Applicant's wife alleged that the complainant had made improper advances towards her. The altercation escalated, and the Applicant bit the complainant's finger, causing grievous harm. He attributes the offence to intoxication.
9. The Applicant expressed remorse and sought leniency but admitted he had not reached out to the complainant to seek forgiveness.
10. The complainant, on his part, opposed the application. He stated that the Applicant had neither apologized nor initiated reconciliation. He further noted that he bore the medical expenses alone and feared that the Applicant was unlikely to change, pointing out that he had previously served imprisonment for a similar offence.
11. The Applicant's family members pleaded that he be granted a non-custodial option, claiming reconciliation and compensation had been achieved under the guidance of elders and with the area chief's knowledge.
12. However, local administrators disputed this, describing the Applicant as a security threat with multiple assault incidents reported against him. They further noted his habitual abuse of alcohol and bhang and denied knowledge of any reconciliation efforts. Prison staff also considered him dishonest.
13. The probation office, in its final assessment, found the Applicant unsuitable for release to the community. The reasons included:
  - a. His unreliability and dishonesty, as he misrepresented details of his conviction and probation history.
  - b. Lack of a reliable social support system, since the alleged reconciliation was contradicted by both the complainant and local administration.

## Determination

14. The application invokes this Court's revisionary jurisdiction under sections 362 and 364 of the *Criminal Procedure Code*. That jurisdiction enables the Court to review and vary orders or sentences if they are illegal, improper, or irregular.
15. The Applicant does not allege that the sentence imposed was unlawful or excessive. His sole plea is for substitution of the custodial term with a non-custodial one on account of remorse and partial service of sentence.
16. I have carefully considered the Applicant's mitigation and the social inquiry report. The report is categorical that he is unsuitable for release on a non-custodial option. The complainant and local administration oppose the application, citing lack of reconciliation, security concerns, habitual offending, and dishonesty.
17. The objectives of sentencing, as set out in the *Judiciary of Kenya Sentencing Policy Guidelines (2023)*, include retribution, deterrence, rehabilitation, restorative justice, community protection, and denunciation.



18. In the present case, while rehabilitation is a relevant consideration, the other objectives—particularly community protection, deterrence, and denunciation—outweigh it. The Applicant has neither reconciled with the victim nor demonstrated genuine reform. On the contrary, the probation report paints him as a repeat and dishonest offender who remains a risk to the community.
19. In the circumstances, this Court finds that the Applicant is not suitable for a non-custodial sentence at this stage.

**Final Orders**

20. The application for revision lacks merit and is hereby dismissed. The Applicant shall continue to serve the custodial sentence imposed by the trial court.

**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT ELDAMA RAVINE HIGH COURT (SUB-REGISTRY) THIS 18<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

.....

**RACHEL NGETICH**

**JUDGE**

In the presence of:

M/s Mburu for State.

Applicant present.

CA, Elvis.

