



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KABARNET

CRIMINAL APPEAL NO. E009 OF 2025

FESTUS KANGOGO ALIAS CHERARAU

APPLICANT

VERSUS

REPUBLIC.....REPUBLIC

RULING

1. The Applicant **FESTUS KANGOGO ALIAS CHERARAU** was charged with the offence of assault causing actual bodily harm contrary to section 251 of the penal code. Particulars are that on the 3rd day of march 2025 at around 1230hrs at Kuresun area in Kabartonjo town, Baringo North subcounty within Baringo county, accused willfully and unlawfully assaulted DAISYCHESEREK thereby occasioning her actual bodily harm. The applicant admitted the charge and plea of guilty was entered, was convicted accordingly and sentenced to 3 years imprisonment.
2. The applicant being dissatisfied with the sentence imposed by the trial court, he filed application for review of sentence

which was erroneously registered as an appeal. The court called for social inquiry report to assist in determining whether to revise sentence imposed by the trial court.

SOCIAL INQUIRY REPORT

3. From the report the applicant has been in custody for 4 months 3 weeks. He has joined prison industry, carpentry section learning carpentry grade III. He states that he had marital issues with his wife as a result of infidelity and his wife had moved out to rent a house at Kabartonjo and when he went there an argument ensued and, in the process, he assaulted her. He says he has asked forgiveness from his wife and prays that he be allowed to serve the remaining sentence while out of custody.
4. The victim was interview and she confirmed that the applicant sought forgiveness but she is not yet ready to forgive him. She is opposed to his early release from custody to serve under probation. The local administration described applicant as a rowdy person while under the influence of alcohol and described his marriage as having been filled with squabbles and frequent cases of domestic violence and that they have been involved in resolution their marital issues. He said he talked to the victim but she was hesitant to forgive the applicant.

ANALYSIS AND DETERMINATION

1. This application invokes the Court's revisionary powers under Sections 362 and 364 of the Criminal Procedure Code, which empower the Court to review sentences that are illegal, improper, or founded on error.
2. Sentencing serves multiple objectives, including retribution, deterrence, rehabilitation, restorative justice, community protection, and denunciation (Judiciary Sentencing Policy Guidelines, 2023).
3. From the report the victim has not forgiven the applicant as alleged by the applicant. The local administration talked of several incidences of domestic violence in the union between applicant and victim before the incident herein. In view of the fact that the victim is yet to forgive the applicant and the fact that the applicant has been in prison for only 4 months 3 weeks, I am of the view that it will not be appropriate to revise applicant's sentence at this stage. The applicant needs more time in custody so as to reflect on his action and resolve to reform and also complete his training so that he may be of benefit to his family once out of prison. From the foregoing, I am inclined to decline revision of sentence.

4. FINAL ORDERS: -

- a) The sentence imposed on the Applicant is hereby declined.
- b) The prison authorities shall ensure that arrangements are made for the Applicant to complete the training and sit the examination.

Ruling delivered, dated and signed Virtually at Kabarnet this
15th Day of October, 2025.



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RACHEL NGETICH
JUDGE

In the presence of:

- Ms. Bartilol for State.
- Appellant Present.
- CA, Momanyi.