



**Gacianta v Republic (Criminal Revision E012 of 2025)
[2025] KEHC 15006 (KLR) (Crim) (16 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15006 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ISIOLO
CRIMINAL
CRIMINAL REVISION E012 OF 2025
SC CHIRCHIR, J
OCTOBER 16, 2025**

BETWEEN

JOSEPH GACIANTA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein was charged with the offence of assault causing actual bodily harm, contrary to section 251 of the Penal Code. He pleaded guilty to the charge and was subsequently sentenced to serve a prison term of one and a half (1 1/2) years without the option of a fine. He has now moved this court through the Notice of Motion dated 9th June 2025, seeking for a review of the sentence. He prays that the sentence be reduced to that of probation or, in the alternative, to include an option of fine.
2. The grounds for the revision are set out in the application and supporting affidavit. The Applicant states that he did not understand the seriousness of the offence and was not represented by counsel at the time of taking plea and mitigation. He is a married father of four children and the sole breadwinner of his family; that he works two jobs, a mason by day and a watchman by night, to sustain his family. He further submits that his continued incarceration means his family, which relied solely on him as aforesaid, is now lacking in basic needs and the children's education is being disrupted.
3. The Applicant further submits that he is a first-time offender, has learnt from his actions, is deeply remorseful and prays for leniency.

The Respondent's response

4. The Respondent, through Mr. B. Ngetich, filed a Replying Affidavit dated 19th June opposing the application. The Respondent states that the maximum penalty for the offence is imprisonment for five



years. It is submitted that the plea was properly taken and trial court considered his mitigation, and passed a sentence that was rather too lenient. The Respondent also submits that the Applicant has failed to demonstrate that the trial court acted on wrong principles of law or acted ultra vires.

Determination

5. The High Court jurisdiction on revision is set out under Section 362 to 367 of the Criminal Procedure Code (CPC). The mandate is to ascertain the legality, correctness or propriety of any order or sentence passed by the subordinate court. (See section 362 of CPC)
6. In the instant case, I have considered the parties' respective submissions and the comprehensive Probation Officer's Report dated 4th July 2025.
7. The Applicant was convicted of the offence of assault causing actual bodily harm, which carries a maximum penalty of five years' imprisonment. Therefore, the sentence of one and a half (1 1/2) years imprisonment passed by the trial court cannot be said to have been illegal or incorrect as it was in compliance with the law.
8. On the question of propriety, the Applicant was a first-time offender; the offence occurred following a domestic quarrel where in the process, the Applicant assaulted his wife. The Probation Officer's report dated 4th July 2025, indicates that the Applicant has expressed remorse; he has accepted responsibility for his action and promised to address his anger and alcohol consumption issues.
9. The probation report further indicates that the victim, who is his wife informed the probation officer that the two have reconciled, and mutually forgiven each other. She stated that the family is struggling to cope financially due to his incarceration; that she is not able to raise fees for their college-going children. She therefore prays that the Applicant be given a non-custodial sentence.
10. Further, the community and local administration have opined that the Applicant can be fully reintegrated and pledged their support to this end and promote reconciliation with the victim.
11. While the sentence imposed by the trial magistrate was within the law, and there was nothing improper about it, an of the considered view that in the prevailing circumstances, continued incarceration of the Applicant would be improper. Further a non-custodial sentence will still serve the ends of justice in the circumstances of this case. .
12. In the end, the Application is allowed. The sentence of one and a half (1 1/2) years imprisonment is hereby set aside, and substituted with an order that the Applicant, is hereby placed on probation for a period of one (1) year from the date of this ruling, under the supervision the Probation Officer, at Isiolo.

DATED , SIGNED AND DELIVERED ,AT ISIOLO, THIS 16TH DAY OF OCTOBER 2025.

S. CHIRCHIR

JUDGE.

In the presence of:

Roba – Court Assistant

Mr Ngetich for the Respondent

The Applicant.

