

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION NO. E308 OF 2025

JOSEPH KIPCHUMBA
APPLICANT

VERSUS

REPUBLIC
RESPONDENT

Coram: Before Justice R. Nyakundi
M/s Sidi Kirenge for the State

RULING

- 1.** The Applicant was charged with the offence of Grievous harm contrary to section 234 of the Penal Code. The particulars of the offence are that on 3rd day of May, 2025 at around 1500hrs at Chebarus area in Turbo Sub-County within Uasin Gishu County, the applicant unlawfully caused grievous harm to PHILIP KIBET ROTICH.
- 2.** The trial court considered the offence and sentenced the applicant to 1 year and he has since approached this court for a sentence review. Consequently, the Probation Officer filed a presentence review report which had the following components:

INTRODUCTION AND SOURCES OF INFORMATION

This is a sentence review report in respect of Joseph Kipchumba who is serving a one-year imprisonment for the offence of grievous harm. In preparing the report, the Court file and Police file were perused, interviewed Prison authorities, Inmate, area chief, brother(William).

CURRENT FAMILY AND PERSONAL HISTORY

The inmate before court the is the son of the late Kiptenai Arap Kemboi and the late Taprandich of Chebarus in Turbo sub-county. He is the youngest among six siblings; two of his brothers are

deceased and his only sister is also deceased. The surviving siblings are adults leading independent lives. The offender enjoys cohesive ties with his siblings. There is no history of criminality in the family.

The inmate was born in 1962 at Kong'asis, Soy sub-county. He was enrolled at Kaboi primary school but later dropped out in class seven due to poverty in the family. He then took up an interest in driving tractors for ploughing, which he has been practicing and earning a living from until he was arrested.

The inmate is married to one Susan Chelagat with whom they had five children. His wife later passed on, leaving the inmate to take care of their children. His two daughters are married and his two sons are also adults leading independent lives. His youngest child is a form three student at Kosirai high school. He lives with him at their home on the inmate offender's parcel of land.

The inmate was taking alcohol; and he committed the offence under the influence of alcohol. His health has significantly deteriorated in the time he has been in custody.

The inmate's brother indicated that the family is ready and willing to welcome him back home.

PRISON ASSESMENT REHABILITATION AND RE-INTERGRATION

During his time in prison, the inmate has shown a positive attitude towards rehabilitation. He has actively engaged in sorting beans. The inmate states that he has undergone personal transformation. Upon his release, he plans to return to his home. The prison authorities regard him well and recommends his early release.

OFFENDERS' ATTITUDE TOWARDS NON-CUSTODIAL SENTENCE:

The inmate accepts the non-custodial sentence and is willing to serve to complete his sentence at home.

CONCLUSION

Your Lordship, the inmate before court is a 63 year old man who was sentenced for one year for the offence of grievous harm. He has under gone rehabilitation and the prison authorities regard him well. The inmate has not acquired any skill because he was engaged in sorting beans. He has a supportive family that is willing help in the reintegration of the inmate to the community.

RECOMMENDATION

*Considering the above, I recommend that he be placed on Probation for the remaining period of his sentence **(7 months)**.*

Decision

3. In determining whether to impose a custodial or non-custodial sentence, the court is required to take into account the following factors: -

a) Gravity of the offence: - sentence of imprisonment should be avoided for misdemeanour.

b) Criminal history of the offender. Taking into account the seriousness of the offences, first offenders should be considered for non-custodial sentence.

c) Character of the offender: - non-custodial sentence are best suited for offenders who are already remorseful and receptive to rehabilitative measures.

d) Protection of the community: - where the offender is likely to pose a threat to the community.

e) Offender's responsibility to third parties: - where there are people depending on the offender.

- 4.** The Community Service Orders Act empowers this Court to order an offender to perform unpaid community service in lieu of imprisonment. This sentencing option is available where the offence carries a maximum term of imprisonment not exceeding three years, or where the Court deems it appropriate that any portion of a longer sentence be served through community-based sanctions. The Act recognizes that certain offenders benefit more from structured rehabilitation within the community than from continued incarceration, particularly where there exists a strong support system and genuine prospects for reformation.
- 5.** Having carefully reviewed the Sentence Review Report and the circumstances of this case, I am satisfied that the Applicant meets the criteria for a community-based sentence. He has already served two months and one week in custody, during which he has demonstrated good conduct and undergone personal transformation. The report establishes that he has a stable home environment on his parcel of land in Chebarus where he lives with his youngest child, a Form Three student at Kosirai High School. His role as the primary caregiver and provider to his youngest child creates significant responsibilities to third parties who depend on him. At 63 years of age, the Applicant's health has significantly deteriorated during his time in custody, further warranting consideration for community-based rehabilitation. Significantly, both the prison authorities and local administration, including his brother William and the area chief, have endorsed his release on non-custodial terms. The Applicant has taken full responsibility for the offence, which was committed under the influence of alcohol, and expressed genuine remorse, demonstrating his receptiveness to rehabilitative measures and his potential for successful reintegration into the community with the support of his family.
- 6.** Accordingly, I find that the remaining period of seven (7) months is appropriate and shall be served through community service. The Applicant is hereby ordered to perform unpaid community service at a designated facility within Chebarus area under the direct supervision of a designated Officer at the said facility. The Supervising Officer shall, in liaison with the Probation Department, submit monthly reports to this Court detailing the Applicant's compliance and progress. Any breach of the conditions of this community service order shall result in immediate cancellation, and the

Applicant shall be remanded to serve the remainder of his sentence in custody. It is so ordered.

**SIGNED, DATE AND DELIVERED AT NOVEMBER THIS 26TH DAY OF
NOVEMBER, 2025.**

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**R. NYAKUNDI
JUDGE**