

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT ELDORET**  
**CRIMINAL REVISION NO. E370 OF 2025**

**VITALIS KEMBOI ..... APPLICANT**

**VERSUS**

**REPUBLIC.....**  
**.....RESPONDENT**

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

**RULING**

1. The Applicant was charged with Assault causing actual bodily harm contrary to Section 251 of the Penal Code. The brief facts of the particulars are that on the 12<sup>th</sup> day of January 2025 at Merewet area in Soy Sub-County within Uasin Gishu County assaulted Dorcas Jerobon thereby occasioning her actual bodily harm.
2. The Applicant was convicted on own plea of guilty and was sentenced to a fine of Ksh 50,000/= in default to serve 12 months imprisonment in Count I. Count II: fined 30,000/- in default to serve 6 months imprisonment on 6<sup>th</sup> February 2025.
3. The Applicant has approached this Court vide an application for review of sentence under Section 362 as read with Section 364 of the CPC.
4. As a consequence of that, 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 Vitalis Kemboi who is serving a 12 months' imprisonment for the offence of Assault Causing Actual Bodily Harm Contrary to section 251 Of the Penal Code and 6 months Malicious damage to property. The sentences run concurrently. In preparing the report, we read Court file, Police file, Prison authorities,*

*Inmate's parents (Simion Cheboi and Rose Chelimo) Inmates area chief and Interview of inmate in prison and the Victim (Dorcas Jerobon)*

## **Current family and personal history**

### **Family background.**

*The inmate is the second-born child of Simon Cheboi and Rose Chelimo. His father is a peasant farmer, while his mother serves as a pastor at A.I.C Fellowship — Merewet. He has four siblings and comes from a family that owns approximately one acre of land, which is utilised for both subsistence farming and residential purposes. Although the inmate previously experienced a strained relationship with his family due to his violent behaviour, his parents have since forgiven him and are willing to receive him back home. This inquiry has established that the inmate's home environment is supportive and conducive to his rehabilitation and reintegration into the community.*

### **Personal history.**

*The inmate, born in 1995 in Merewet Village, Kongasis Location, attended Lemoru Primary School and later joined Lorwa Secondary School, where he dropped out in Form Two. After leaving school, he remained at home to assist his parents with peasant farming before relocating to Mombasa City, where he undertook various casual jobs for seven years. In 2020, he returned home to start his family. He married Nelly Chepkemboi, and together they were blessed with two children: Edwin Kipchumba, a Grade Two pupil, and Winnie Chepchirchir, a PPI learner at Merewet Township. Owing to alleged domestic issues, the couple eventually separated; his estranged wife took the younger child, leaving the inmate with custody of one child. Prior to his incarceration, he resided in a one-room semipermanent house. He is in good health and confirms that he receives regular visits from his sister, who is also the victim in this matter.*

### **Prison assessment rehabilitation and re-integration**

*During his incarceration, the inmate has demonstrated commendable efforts towards rehabilitation. He has received counselling and training on the consequences of crime and has exhibited a strong willingness to*

*reform. He expresses sincere remorse for his actions and affirms that he has undergone significant personal change. Prison authorities hold him in high regard and support his early release.*

**Offenders' attitude towards non-custodial sentence:**

*The inmate admits to having committed the offence and states that his time in custody has taught him a valuable lesson. He describes himself as a reformed individual and expresses a strong desire to turn his life around. He appeals for a non-custodial sentence and pledges not to reoffend. He further indicates that he has reconciled with the complainant, who is his sister.*

**Conclusion**

*Your Lordship, the prison authorities hold the inmate in high regard. He has been of significant assistance within the prison and has consistently adhered to the established rules and routines. He expresses willingness to apply the modern skills he has acquired during his incarceration. Furthermore, his sister, who was the complainant in this matter, has forgiven him and continues to visit him in prison. His family members have indicated their readiness to support his reintegration and rehabilitation.*

**Recommendation**

*In view of the support expressed by both the prison authorities and the inmate's family, he may be considered suitable for a two-month Community Service Order at the Merewet Assistant Chief's Office.*

**Decision**

5. 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.

6. Further to the aforementioned, the Community Service Orders Act makes it possible for courts to issue an order requiring the offender to perform community service. This option is available to court when the offender is convicted of an offence punishable by imprisonment for a term not exceeding three years or imprisonment for a term exceeding three years but for which the court determines that any of that term as would be appropriate be served within the community on unpaid public works.

7. Having gone through the facts of the present case and particularly the charge in question, the circumstances fit the legal framework of the Community Service Act as an alternative sentence to imprisonment. Consequently, the effective measure as recommended by the Sentence Review Report is to have the applicant serve the remainder of his sentence i.e. 2 months at Merewet Assistant Chief's Office. Monthly reports shall be filed in court by the supervisor of the applicant through the probation officer. The essence of it is to achieve the effectiveness of this non-custodial sentence and that any breach of any conditions by the applicant shall attract cancellation of the community service order and have the sentence reverted to custodial sanctions.

8. It is so ordered.

**SIGNED, DATE AND DELIVERED AT NOVEMBER THIS 26<sup>TH</sup> DAY OF  
NOVEMBER, 2025.**

.....  
**R. NYAKUNDI**  
**JUDGE**