REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL REVISION NO. E379 OF 2025

EVANS KIPKOGEI 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 29th day of October 2025 at about 2200hrs at Kaptich village in Marakwet West Sub County within Elgeyo Marakwet County unlawfully assaulted Tabarno Kipserem thereby occasioning her actual body harm. The Applicant was convicted on his own plea of guilty and was sentenced to serve 1 year imprisonment on 3 November 2025.
2. As a consequence of that the Probation Officer filed a presentence review report which had the following components:

   INTRODUCTION AND SOURCES OF INFORMATION

   This sentence review report is in respect of Evans Kipkosgei Kemboi who is serving one-year imprisonment for the offense of assault causing actual bodily harm c/s 251, in generating the report, we interviewed the inmate currently held at Eldoret G.K Prison, prison authority, his family members represented by his brother Elias Kemboi and area administrators (chief and village elder). We were unable to trace the victim in the matter hence her views are not captured herein.

   CURRENT FAMILY AND PERSONAL HISTORY

   Family Background*.*

The inmate was born to Barnabas Kaitany and Rose Kemboi. His ancestral home is at Kaptich village be working away in Narok where he is believed to have started a second family. His mother who admitted that he did not get along with his father whom he blamed for neglecting them. He is the third born in a family of seven (7) siblings namely: Joyce Chelagat married at Chesiepit; Elias Kemboi, in Eldoret town; Stephen Kemboi, a Form 4 student; Victor Kemboi, Grade 8 Learner and Navy Kimngetich a Grade 7 learner. Before this incidence, none of the family members had criminal records. He seems to enjoy strong family ties as demonstrated by his family members who vouched for his early release. The family occupies 13 acres of ancestral land of which the inmate was apportioned 0.2 acres and later repossessed by his father after he fell-out with him. He has no house of his own and prior to his incarceration, he was accommodated in one of his parents' houses within the homestead. His brother promised to be part of his community supervision and rehabilitation interventions.

Personal history

When interviewed Evans stated that he was born in 1997. He has Primary school level of education having attended Chemurgoin Primary school in Marakwet West where he did KCPE in 2019 but never joined Secondary School. His failure to further his education was traced to negative peer influence and unresponsive parenthood. He later engaged in menial jobs and pursued casual jobs for income. He equally engaged in farming activities. The inmate lacks skills training to position him competitively in job market. He is unmarried with no direct familial responsibilities but claims that he sired a daughter currently aged 7 years in a relationship that did not culminate in a marriage. He admits to be a social drinker but denies history of alcohol and drug use. He confessed that this was his second with his father. He claims that he was later acquitted by the court. We were unable to trace his previous sober state but can be troublesome under influence of alcohol. During our interaction, he confirmed being in good health.

PRISON ASSESSMENT REHABILITATION AND RE-INTEGRATION

Prison authorities at Eldoret GK Prison submitted that the inmate had been at the facility for 10 days. This according to them was a very short period for them to make a proper assessment of his behavior and attitude. They nevertheless, consider him low risk offender capable of benefiting from community interventions hence endorsed his early release. If released, the inmate hopes to join his family at Kaptich where he has ready accommodation. He intends to revert to his previous potato farming and engage in casual jobs to eke out a living. He has promised to desist from crime and remain law abiding. The area chief and village elder welcomed the idea of his early release hoping that he is ready to change his behavior and remain law abiding.

OFFENDERS' ATTITUDE TOWARDS NON-CUSTODIAL SENTENCE*:*

The inmate regrets his previous conduct and promise to change. He is receptive to community-based court sanction and willing to submit to conditions of community service orders.

CONCLUSION

The inmate comes from a humble family with stable social bonds and despite past conflicts with his father, his siblings and extended family have shown willingness to support his reintegration. The presence of a committed support system, including his brother's pledge to participate in community supervision, provides a reliable structure for monitoring and guiding his behavior upon release. His personal history indicates limited educational and economic opportunities, which have contributed to negative peer associations and past behavioral challenges. However, he acknowledges these shortcomings and expresses a willingness to change. He has no significant record of serious criminal behavior. Local administrators similarly describe him as calm and well-behaved when sober, with difficulties primarily arising in circumstances involving alcohol consumption.

Prison authorities at Eldoret GK Prison, though limited by the short duration of his incarceration, also regard him as suitable for community-based correctional interventions. He has expressed clear plans for re-establishing himself economically through farming and

casual labor and has secure accommodation at his family home. He has demonstrated remorse, willingly accepts responsibility for his conduct, promise to coexist peacefully with the complainant and expresses readiness to comply fully with community service requirements.

RECOMMENDATION

My Lord, in view of the above considerations, we find the inmate suitable and it is recommended that his sentence be varied to 7 Months of Community Service Orders at Assistant Chief office Busieso Sub-location. This would provide him opportunity to reform within a supervised community environment, support social reintegration and reduce the risk of reoffending while allowing him to contribute meaningfully to the society.

Decision

3. This application has been considered under Art 50(2)(p)(q), 6(a)(b) as read with Section 362 & 364 of the Criminal Procedure Code.
4. The guiding principles on review of sentence post-conviction is well articulated by the Court of Appeal in **Bernard Gacheru v Republic [2002] eKLR** the Court held that:

    "It is now settled law, following several authorities by this Court and by the high Court, that sentence is a matter that rests in the discretion of the trial Court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate Court will not easily interfere with sentence unless, the sentence is manifestly excessive in the circumstances of the case, or that the trial Court overlooked some material factor, or took into account some wrong material, or acted on a wrong principle. Even if, the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial Court on sentence unless, anyone of the matters already states is shown to exist."

5. This was also the position taken by the Court in **S vs. Malgas 2001 (1) SACR 469 (SCA)** held that:

   "*A Court exercising appellate jurisdiction cannot, in the absence of material misdirection by the trial Court, approach the question of sentence as if it were the trial Court and then substitute the sentence arrived at by it simply because it prefers it. To do so would be to usurp the sentencing discretion of the trial Court...However, even in the absence of material misdirection, an appellate Court may yet be justified in interfering with the sentence imposed by the trial Court. It may do so when the disparity between the sentence of the trial Court and the sentence which the appellate Court would have imposed had it been the trial Court is so marked that it can properly be described as "shocking", "startling" or "disturbingly inappropriate"*

6. The doctrine of proportionality in sentencing is one of the fundamental aspect which actually must define the trial Courts discretion in imposing a fair and appropriate sentence. The Court in **Tarry v Pryce (1987) 24 A Crim R 394, 402** had this to say:

   Although the discretionary aspect of sentencing is of great importance, there is to my mind no doubt that there is scope for a more scientific approach. A lack of consistency between sentencers dealing with run-of-the-mill cases cannot be supported by reliance on the discretionary power to sentence. The need for consistency in the punishment in like cases of like persons overrides the right of the sentencers to impose his idiosyncratic view.

7. The cardinal principle in sentencing is that of personality. The learned Author Richard G Fox in a paper presented at the Northern Territory Stipendiary Magistrates' Annual Conference 30th August 1993 had this to say on the proportionality in sentencing:

   "The principle of proportionality requires that the severity of the sanction is equal to the seriousness of the offence. This concept has proved difficult to implement. There have been two main

reasons for this. First, there is no true appreciation of what factors are relevant to the seriousness of an offence. It has been suggested that this is gauged solely by reference to the amount of unhappiness caused by the offence. Secondly, there is no principled method for ascertaining the severity of punishment. This too has been addressed, by employing the same common denominator: happiness. These conclusions flow from the fact that a utilitarian theory of punishment best underpins the principle of proportionality. A consideration of the law of the criminal defences has shown that the courts over the ages have employed essentially consequential considerations in evaluating the seriousness of 'criminal' behavior. This adds weight to the theory that, at the bottom, offence seriousness is solely a variable of the amount of harm caused by the offence. Harm includes culpability; not because culpability is intrinsically relevant, but because of the close connection between intentions, actions and consequences.

8. From the strength of the discussed principles, mitigating factors adduced by the Applicant of being a first offender, being remorseful and the lessons learnt while he has been serving in custodial sentence and the latest social inquiry report dated 20th November 2025 persuades me to exercise discretion of reviewing the custodial sentence to have it substituted with non-custodial for the remainder of the period of seven (7) months to be placed under C.S.O at the Chief's Office Busieso Sub Location. It is therefore necessary that the Applicant be removed from Prison custody for C.S.O in support of the social integration within his home-based environment. It is so ordered.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 25TH DAY OF NOVEMBER, 2025

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R. NYAKUNDI

JUDGE