



REPUBLIC OF KENYA



**KENYA LAW**  
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**Maraka v Republic (Criminal Revision E369 of 2025)  
[2025] KEHC 17326 (KLR) (26 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17326 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E369 OF 2025  
RN NYAKUNDI, J  
NOVEMBER 26, 2025**

**BETWEEN**

**CHARLES MARAKA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant was charged with Creating disturbance in a manner likely to cause a breach of peace contrary to Section 95(1)(b) of the Penal Code. The facts are that on the 28<sup>th</sup> day of September at Nukia area in Soy Sub County within Uasin Gishu county created disturbance in a manner likely to cause a breach of peace to Alice Akeno by uttering the words “Kabla niende jela nitafanya kitu ndio nifungwe sasa vizuri” after trying to hit her with a stone.
2. The Applicant pleaded guilty and was sentenced to serve six months’ imprisonment on 8<sup>th</sup> October 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 Sentence Review Report dated 18<sup>th</sup> November 2025 which had the following components:

**Introduction and sources of information**

This is a sentence review report in respect of Charles Maraka who is serving a six months' imprisonment for the offence of Creating disturbance in a manner likely to cause a breach of peace C S 95(1)(b) of the penal code. In preparing the report, we read Court file, Police file, Prison authorities, Inmates area chief and Interview of inmate in prison, family members and the Victim



## **Current family and personal history**

### **Family Background.**

The inmate before this Honourable Court is the fourth-born in a family of eleven children to the late Julius Tanui and Alice Akello. He comes from a generally cohesive family that relies on small-scale farming and modest business activities for sustenance. None of his siblings or immediate family members have a history of criminal conduct. He is described as a temperamental person who is easily provoked, with the cause of this conflict reportedly linked to unresolved land disputes. Nonetheless, his family members are willing to welcome him back home and are hopeful that he has reformed. This inquiry has established that the inmate is welcome at home, with his family expressing their willingness to support his reintegration and rehabilitation.

### **Personal history.**

The inmate was born in 1992 in Kapsara Village, Transzoia County. He attended Kapsang Primary School but dropped out in Class One due to alleged lack of school fees. Thereafter, he engaged in peasant farming and casual labour to support himself. He is single and has no parental responsibilities. He resides in a one-room semi-permanent house on his parents' land. He reports that he neither drinks alcohol nor abuses any drugs or substances and is in good physical health. This inquiry further established that he lacks formal training or professional qualifications and relies entirely on casual employment for his livelihood. Notably, he is a first-time offender.

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

During his incarceration, the inmate was assigned to the prison farm, where he acquired basic farming skills. He also received counselling and underwent training on the consequences of crime, demonstrating a strong willingness to reform. The inmate has expressed sincere remorse for his actions and affirms that he has undergone significant personal transformation. Prison authorities hold him in high regard and support the prospect of his early release.

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

The inmate has admitted to committing the offence and states that his time in custody has served as a turning point in his life. He is appealing for a non-custodial sentence and pledges to make peace with his mother, who was the complainant in this matter.

### **Conclusion**

Your Lordship, inquiries with the prison authorities indicate that the inmate has demonstrated commendable discipline and has made significant progress towards rehabilitation. Furthermore, both the complainant and local administrators are of the view that the inmate has learnt his lesson and may now be considered suitable for community-based sanctions.

### **Recommendation**

In view of the positive report from the prison authorities regarding the inmate's conduct and rehabilitation, and given that his home environment is deemed suitable to support his reintegration, it is recommended that he be placed on a three-month Community Service Order to be served at Ziwa Sub-County Hospital under the supervision of the In-charge at the facility.



## Analysis and Determination

5. The gist of this application is based on sections 357, 362, 364 and 382 of the Criminal Procedure Code as read with Article 50 (2) (p) (q) of *akn ke act 2010 constitution the Constitution* which provides as follows:
  - (p) to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishments for the offence has been changed between the time that the offence was committed and the time of sentencing; and
  - (q) if convicted, to appeal to, or apply for review by, a higher court as prescribed by law.
  - (3) if this Article requires information to be given to a person, the information shall be given in language that the person understands.
6. The same constitution in Art 50 (6) (a) (b) expressly states as follows:

A person who is convicted of a criminal offence may petition the High Court for a new trial if-

  - a. The person's appeal, if any, has been dismissed by the highest court to which the person is entitled to appeal, or the person did not appeal within the time allowed for appeal; and
  - b. new and compelling evidence has become available.
7. The role of non-custodial sentence should underpin our penal system in which custodial sentence remains a recourse of last resort in punishing offenders. The sentence policy guidelines of the judiciary 2023 provides a framework in which Judicial discretion should be exercised to arrive at a fair and proportionate sentence on individualized circumstances. The objectives and principles of sentencing are well articulated and defined as follows:
  - a. Retribution: to punish the offender for his her criminal conduct in a just manner.
  - b. Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
  - c. Rehabilitation: to enable the offender reform from his her criminal disposition and become a law-abiding person.
  - d. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.
  - e. Community protection: to protect the community by incapacitating the offender.
  - f. Denunciation: to communicate the community's condemnation of the criminal conduct.
  - g. Reconciliation: To mend the relationship between the offender, the victim and the community.
  - h. Reintegration: To facilitate the re-entry of the offender into the society.
8. Rule 8.2 of the Tokyo rules on Non-custodial Sentences affirm that courts or sentencing authorities may dispose off cases in any of the following ways-verbal sanctions, admonitions, reprimands and warning, conditional discharge, status penalty, economic sanctions and monetary restitution, restitution to the victim or compensation order, confiscation or expropriation, suspended or deferred



sentence, probation and judicial supervision, community service order, house arrest and any other non-institutional treatment. Supervision is critical in realization of sentencing objectives. This is operationalized as poor and lax supervision leads to reconviction and abscondism. The quality and number of contacts between the offender are key in reforming, re-integrating the offender. The caseload per officer and the frequency of contacts between the officer and the probationer determines the level of intensity of supervision based on the risk category of the probationer. The community plays key role in having offender's change. Community attitude, home environment is deterministic of offender's potential to change.

9. Sentencing is a discretionary process mainly exercised by trial courts who have the advantage to appreciate the circumstances of the offence and how it applies to the sentencing objectives and principles within the regulatory framework of our sentencing policy guideline 2023. This court is being asked to review the custodial sentence and have it substituted with non-custodial sentence. As I appreciate the record and the impugned decision on sentence I bear in mind that this is one area of law which involves the weighing of many complex factors, it will always be possible to point to some factors which should arguably have been taken into account or left out of account; even if they should have been, the court should not intervene unless it is convinced that this would have resulted in the decision going the other way.
10. There is a big outcry amongst our communities and society at large on the level of inconsistency, disparity, unfairness, and disproportionate verdicts on sentence being imposed by the trial courts and on even on appeal which do not reflect the sentencing objectives and principles in our policy document. As if that is not enough the letter and spirit of our sentencing scheme seems to depart from the legislature's intention and vision in the criminal administration of justice. Sentencing in Kenya ought to be fair and proportionate to the crime being prosecuted by the state as against the accused persons or defendant. These canons on fair and proportionate sentence requires that:
  - a. All relevant factors of a case must be considered including the seriousness of the offence, the impact on the victim and others affected by the case, and the circumstances of the offender;
  - b. Sentences should be no more severe than is necessary to achieve the appropriate purposes of sentencing in each case;
  - c. Reasons for sentencing decisions must be stated as clearly and openly as circumstances permit;
  - d. Sentencing decisions must be made lawfully and sentences must have regard to any sentencing guidelines which are applicable;
  - e. People should be treated equally, without discrimination; and
  - f. Sentencing decisions should treat similar cases in a similar way, assisting consistency and predictability
11. It is vital that the test of the seriousness of the offence, when weighed against the fact that the applicant pleaded guilty to the offence of creating disturbance in a manner likely to cause a breach of peace contrary to section 95(1) (b) of the Penal Code, together with the effect of the mitigating factors, renders this court inclined to review the sentence for purposes of rehabilitating the offender. As a consequence, he is placed under a community service order for a period of three (3) months at Ziwa Sub- County Hospital under the supervision of the in-charge at the facility. It is so ordered.

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 26<sup>TH</sup> DAY OF NOVEMBER, 2025**

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

