



REPUBLIC OF KENYA



**Melek v Republic (Criminal Revision E059 of 2025)
[2025] KEHC 17193 (KLR) (26 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17193 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL REVISION E059 OF 2025
PN GICHOHI, J
NOVEMBER 26, 2025**

BETWEEN

JOHNSTONE MELEK APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Johnstone Melek (Applicant), has filed the application dated 25th April, 2025 titled 'Revision', seeking review of the sentence meted against him, alleging that it was unduly harsh and disproportionate to the circumstances of the offence he committed.
2. He states that he is now 48-year and that he was sentenced to five years imprisonment for the offense of causing grievous harm, contrary to Section 234 of the Penal Code.
3. He highlights several mitigating factors that the initial court allegedly did not adequately consider and these include that -;
 1. He was unrepresented during his plea and sentencing.
 2. He pleaded guilty and expressed remorse for his actions.
 3. The matter was amicably resolved with his wife.
4. He was a first-time offender as confirmed by the complainant and the prosecution.
5. The court's sentence did not reflect the rehabilitative efforts or the applicant's socio-economic background, as he lives in an informal settlement and has been affected by economic hardship.
4. He suggests that this case would have been better handled through the Alternative Justice System (AJS). He reiterated this Court's authority to review the sentence citing Sections 362 and 363 of the Criminal



Procedure Code and adding that the High Court has authority to review the legality and correctness of a lower court's sentence.

5. In response to the application, Mr. James Kihara, Prosecution Counsel filed a response on 22nd July, 2025. He stated that the Applicant had unequivocally admitted to the offense and its substance, and had pleaded with the Court for forgiveness.
6. It is his position, that the Court was notified of the high prevalence of domestic violence cases. Thus, the Trial Court requested a probation report, which was duly considered before the applicant was handed a five-year jail term, noting in its decision that the Applicant herein was not remorseful.
7. While emphasising that sentences should reflect the proportionality of the offense, he stated that since the term handed down was legally sound, it is incumbent upon the Applicant to demonstrate that the sentence was prejudicial, illegal, irregular, or improper.
8. He deponed that the Applicant has not pointed to any wrongdoing by the learned Magistrate but seems keen to suggest that the matter be dealt with through Alternative Justice Systems (AJS).
9. Further, he stated that the offense committed is a felony and there is no indication on record that the Applicant attempted to reconcile with the complainant to warrant any review at this juncture.
10. He therefore urged this Court not to interfere with the discretion of the trial Court unless an illegality or irregularity or prejudicial to the Applicant is demonstrated. Terming the application as devoid of merit, he urged the Court to strike it out.

Determination

11. What is before this Court is not an appeal but an application for review under Sections 362 and 363 of the Criminal Procedure Code. Section 362 provides that:-

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”
12. Further, Article 165 sub Article 6 & 7 of *the Constitution* stipulates that:-

“165 The High Court has supervisory jurisdiction over the subordinate courts
(6) and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”
13. Accordingly, this Court confirms from the lower court record that the Applicant herein was convicted for the offense of causing Grievous Harm contrary to Section 234 of the Penal Code.
14. When the charges were read to him on 3rd April, 2025 in Kiswahili language which he said he understood, he replied “It is true”.
15. The facts read to him were that:- On 2/4/202at night where the complainant (your wife) was sleeping, you arrived and started confronting her with and then hit her with a pipe all over her body. You then



- hit her with a panga where she sustained serious injuries . Your child David screamed and neighbours came to her rescue. The complainant was taken to hospital for treatment. The next day she went to Rongai health centre. She reported at Rongai Police Station and you were arrested.”
16. Upon being asked if the facts were correct, he again replied :- “ The facts are correct.” It was at this juncture that a plea of guilty was entered.
 17. Regarding previous records, the Prosecution stated:- “ No records.”
 18. In mitigation, the Applicant stated:- “ I ask for forgiveness.” The Prosecutor then addressed the trial court thus:- “ It is a serious offence. There is a high rise of domestic violence. Accused is not remorseful for his offence.”
 19. At that point, the trial court stated:- “ Mitigation considered . Noting the relationship between the accused and the complainant , this court deems it fit to call for probation service report.
 20. When the Report was duly availed on 17/4/2025, the trial court held while sentencing the Applicant to a term of five (5)years imprisonment:-

“The Court has considered the pre-sentencing report that the accused person is fit for non-custodial sentence of probation for a period of 6 months. The Court has considered the severity of the offence and the nature of the offence which attracts a maximum of life sentence under Sec.234 of the Penal Code, if one is convicted. It is not lost to this Court that it did not get a chance to see the complainant. However, this Court is not bound by the recommendation of the Probation Report. This Court still retains the discretion to sentence. The Court finds that this case is not suitable for placing the accused person on probation period. He has never shown Remorse though he pleaded guilty to the charges. He deserves a custodial sentence to deter him once from committing a crime in the future.”
 21. This Court has considered that sentencing a discretionary power of the trial court but which must be exercised judiciously. Indeed, and even though this matter has come by way of revision and not appeal, the Court of Appeal in the case of Bernard Kimani Gacheru v Republic [2002] KECA 94 (KLR) stated in regard to sentencing :-

“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, that 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 feels that the sentence is heavy and that 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 stated is shown to exist.”
 22. The sentence herein was five years imprisonment whereas the Section 234 of the Penal Code provides for life imprisonment. As rightly put by the trial court, a Probation Officer’s report is not binding but where the recommendation is not applied by the Court, reasons should be given for such disregard. It is clear that the trial court gave reasons for not following the said report and the reasons were sound.
 23. Further, and from the process followed by the trial court, there is no illegality or propriety of the said sentence as contemplated under Section 362 of the Criminal Procedure Code. In light of the foregoing,



there is no reason for interfering with the sentence. Under Section 333 (2) of the Criminal Procedure Code, the period spent in custody should be taken into account in computing the sentence herein.

24. In the upshot, the Court makes the following Orders:-

1. The application dated 25th April, 2025 lacks merit and therefore dismissed .
2. The Applicant herein shall serve his sentence to term.
3. The sentence of five (5) years to run from the date of arrest being 02/04/2025.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 25TH DAY OF NOVEMBER , 2025.

PATRICIA GICHOHI

JUDGE

In the presence of:

Johnstone Melek -Applicant

Mr. Kihara for the Respondent

Kamau, Court Assistant

