



REPUBLIC OF KENYA



**Too v Republic (Criminal Revision E326 of 2025)
[2025] KEHC 17286 (KLR) (25 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17286 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E326 OF 2025
RN NYAKUNDI, J
NOVEMBER 25, 2025**

BETWEEN

ELIJAH KIMUTAI TOO APPLICANT

AND

REPUBLIC RESPONDENT

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 5th day of May 2022 at Ndungulu village in Leingure location within Uasin Gishu County willfully and unlawfully assaulted Esther Chebor Koech thereby occasioning her actual bodily harm.
2. The case proceeded for full trial. The Applicant was convicted and sentenced to a fine of Ksh 50,000 in default to serve 6 months imprisonment on 24 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 presentence review report which had the following components:

D. Current Home And Personal Circumstances

My Lord, the inmate is the son of Daniel Kiptoo and Grace Kiptoo of Ndugulu village in Kesses sub-county within Uasin gishu county. The inmate is the 6th born in a family of 8 children. The family live in Ndugulu village practicing Before his arrest, he worked as a casual worker in his village and also in neighboring shopping centers. He attended Ndugulu primary school and later dropped out due to what he says lack of interest. He is married to Sharon Jeptoo and blessed with one child aged 3 years.



E. Prison Assessment, Rehabilitation And Re-integration:

Your Lordship, the inmate was carrying out cleaning work in prison dispensary during his stay in prison. Prison authorities have nothing negative about him. The complainant is the neighbor. They had fought over sheep which strayed into a maize farm destroying it. They have reconciled. The inmate's family members are looking forward to a reunion. They are eagerly waiting for his release.

F. Offender's Attitude Towards Non-custodial Measures

My Lordship, the inmate is positively responsive to early release. He is ready to spent the rest of his remaining term out on a non-custodial sentence. He has promised to be a law abiding citizen in the community and not take the law into his own arms.

G. Recommendations

Your Lordship, with regards to the above information, the inmate is recommended to serve Community Service Order for a period of 3 months.

Decision

5. The principles of sentencing and all its aims are well articulated in the Sentencing Policy Guidelines of the Judiciary 2023. The application of it must be construed within the constitutional imperatives under the Bill of Rights commonly referred to as Chapter 4 of *the Constitution*. One of the key pillars in sentencing is the provisions under Article 25 which states inter alia that the rights and fundamental freedom from torture and cruel, inhuman or degrading treatment or punishment should underpin exercise of discretion of a Judicial Officer when contemplating imposition of a sentence against a particular offender who has been found guilty of a specific crime.
6. The contemporary criminal justice in Kenya is driven mainly by the retributive or deterrent objective. There is less emphasis on restorative justice or rehabilitation. Models of justice are commonly divided into three main categories: retributive, deterrent and restorative. Retributive justice focuses on the moral dimension of justice. It emphasized the notion that perpetrators of a crime or those who fail to abide by laws of customary norms “deserve” to be punished for their wrongdoing. On the other hand, a deterrent view of justice focuses on the instrumental dimension of justice. It emphasizes that punishment for wrongdoing is necessary to prevent further violations of the law and to signal the boundaries of socially acceptable behavior. Finally, the restorative view of justice focuses on the need to rebuilt or restore relationships and/or socio-economic status. The form of justice includes scope for compensation as a way of correcting wrongdoing and achieving justice.
7. Having reviewed the entire record of the primary case docket, and the issues raised on revision as advanced by the Probation Officer, I am persuaded that both deterrent and restorative objectives can be achieved in transforming or rehabilitating an offender, in this matter the applicant. It is for those reasons I invoke the provisions of Section 362 of the CPC as read with Article 50 (2) (p) & (q) of *the Constitution* to vary the custodial sentence and have it substituted with a C.S.O Order for a period of three (3) months at Ndugulu Primary School. It is so ordered.

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

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R. NYAKUNDI

JUDGE

