

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION NO. E365 OF 2025

MIKA **KIBIWOTT.....**
.....**APPLICANT**

VERSUS

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

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

RULING

- 1.** The applicant was charged of grievous harm contrary to Section 234 of the penal code. The brief facts are on the 5th day of August 2024, at Kapseret center Kapseret Sub County within Uasin Gishu County, unlawfully did grievous harm to Felix Kipkosgei Koech.
- 2.** The Applicant pleaded guilty and was sentenced to a fine of Kshs. 50,000/= in default 2 years' imprisonment on 18th December 2024.
- 3.** The applicant seeks a sentence review. He prays that he may be allowed to serve a non-custodial sentence. 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."

4. I have considered the offence in question and the aggravating factors. The sentencing objectives in Kenya have been captured in the Sentencing guidelines 2023 to be the following: -

- i. *"Retribution: to punish the offender for his/her criminal conduct in a just manner.*
- ii. *Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.*
- iii. *Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law-abiding person.*
- iv. *Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.*
- v. *Community protection: to protect the community by incapacitating the offender.*
- vi. *Denunciation: to communicate the community's condemnation of the criminal conduct.*
- vii. *Reconciliation: To mend the relationship between the offender, the victim and the community.*
- viii. *Reintegration: To facilitate the re-entry of the offender into the society.*

5. A review of the record indicates anger management issues on the part of the applicant which need to be addressed not only through punishment but through rehabilitative measures available under a non-custodial sentence with proper guidance and counselling. The underlying issues which led to the commission of this offence of grievous harm against Felix

Kipkosgei Koech ought to be addressed through appropriate intervention so that the threat and risk of reoffending are brought under control.

6. From the above analysis and in considering the circumstances of the case, I am of the considered opinion that the applicant ought to benefit from a non-custodial sentence given that he is a suitable candidate for rehabilitation and reintegration. There is need however that victim-offender mediation be undertaken under the leadership of the probation officer to effectively deal with the underlying conflict between the applicant and the victim. If need be, the probation officer may engage a professional mediator to convene a meeting to facilitate reconciliation and address the anger management issues that precipitated this offence. The applicant is hereby placed under Probation for the remaining period. It is therefore necessary that during the probationary period, quarterly reports be filed in court by the probation officer to capture progress in rehabilitation and the elements of restorative justice in this case.

7. Orders accordingly

SIGNED, DATE AND DELIVERED AT NOVEMBER THIS 3RD DAY OF DECEMBER, 2025.

.....
R. NYAKUNDI
JUDGE