



**Madegwa v Republic (Criminal Revision E336 of 2025)  
[2025] KEHC 17694 (KLR) (1 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 17694 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E336 OF 2025  
RN NYAKUNDI, J  
DECEMBER 1, 2025**

**BETWEEN**

**DOUGLAS MADEGWA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant was charged with preparation to commit a felony contrary to Section 308(3) (e) of the Penal Code. The brief facts of the particulars are that on the 22<sup>nd</sup> day of May 2024 at around 0845hrs at Langas estate in Kapseret Sub County within Uasin Gishu County was found armed with offensive weapon namely wheel spanner in a chicken house of Samson Mecha Bota by the day with intent to commit a felony therein to with theft, having taken precautions to conceal his presence.
2. Count II: Assault causing actual bodily harm contrary to Section 251 of the Penal Code. The facts are that on the 22<sup>nd</sup> day of May 2024 at around 0845hrs at Langas estate in Kapseret Sub-County within Uasin Gishu County unlawfully assaulted Samson Mecha Bota thereby occasioning him actual bodily harm.
3. The Applicant pleaded guilty and was sentenced to serve 5 years imprisonment in Count I and 1 year imprisonment in Count II on 10<sup>th</sup> July 2024.
4. The Applicant has approached this Court vide an application for review of sentence under Section 362 as read with Section 364 of the CPC.
5. As a consequence of that the Probation Officer filed a presentence review report which had the following components:
  - A. Current Home And Personal Circumstances



My Lord, the inmate is the son of the late Illem Zeze and the Late Esthna Kadenge of Otacho village in Suna East Constituency within Migori County. The family owns approximately 1 Acre of land where the family home is built.

The inmate is the 6<sup>th</sup> born in a family of 6 children. his family live in langas Estate. All his siblings are adults and are based in various parts of the county.

Before his arrest, he worked as a casual worker in his estate and also in neighboring shopping centres. He attended central primary school in Eldoret and did not proceed to high School due to what he says as lack of school fees. He is married to Ann Cherotich with two children.

B. Prison Assessment, Rehabilitation, And Re-integration:

Your Lordship, the inmate was carrying out farm work during his stay in prison. Prison authorities have nothing negative about him. The complainant is/was his father tenant and has since disappeared from Langas after selling part of his properties and nobody knows about his whereabouts. The inmate's other family members are looking forward to a reunion. They are eagerly waiting for his release. His brother Martin is ready to be part of the reintegration Process since he is the one taking care of the inmate's family

E. Offender's Attitude Towards Non-custodial Measures

My Lordship, the inmate is positively responsive to early release. He is ready to spend the rest of his remaining term out on a non-custodial sentence. He is also willing to practice what he learned in prison in the community.

E. Recommendations

Considering the above, I recommend that he be placed on Probation Orders for the remaining 21 Months of his Sentence, During His time on Probation he will be guided and counselled accordingly.

## Decision

6. 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.
7. The *Community Service Orders Act* empowers this Court to order an offender to perform unpaid community service in lieu of imprisonment. This sentencing option is available where the offence carries a maximum term of imprisonment not exceeding three years, or where the Court deems it appropriate that any portion of a longer sentence be served through community-based sanctions. The Act recognizes that certain offenders benefit more from structured rehabilitation within the



community than from continued incarceration, particularly where there exists a strong support system and genuine prospects for reformation.

8. Having carefully reviewed the Sentence Review Report and the circumstances of this case, I am satisfied that the Applicant meets the criteria for a community-based sentence. He has already served three months in custody, during which he has demonstrated good conduct and gained insight into his destructive patterns of behaviour. The report establishes that he has a stable home environment with his mother and siblings who have committed to supporting his rehabilitation. Significantly, both the prison authorities and local administration have endorsed his release on non-custodial terms. His struggles with alcoholism, while a contributing factor to the offence, also present an opportunity for structured intervention through community service combined with ongoing rehabilitation support.
9. The Superior Courts have delved into the issue of sentencing which is one of the core functions of trial Courts within our Criminal justice system. In the *Fatuma Hassan Salo v Republic* [2006] eKLR Makhandia J as he then was remarked; Thus, the court should be guided by evidence and sound legal principles when it comes to the arrival of its decision. He also stated that the court should put into consideration all the relevant factors and exclude the irrelevant factors. In addition, the Court in *Peter M. Kariuki v Attorney General*, [2016] eKLR also made the following observations; That a Court has been granted discretion in a manner that is both judicial and reasonable – not upon caprice or personal opinion. This has been emphasized in the judgments of other cases to be useful to the appeal court when analyzing the judgment of a Lower Court.
10. The Sentencing Guidelines of 2023 provide a foundation and a reference point for Judges and Magistrates in exercising discretion. The Policy Guidelines provides for a three-step approach that is to be applied by a trial Court in individualizing specific sentences befitting specific offences:
  - a. Sentencing options – The Court is meant to consider the sentencing options that are provided for by the statute where the crime falls under. This means a reference to the statute that provides for the crime in question.
  - b. Custodial v non-custodial – For the statutes that provide for both custodial and non-custodial options, the guidelines give principles that are to be considered in analyzing which of these two orders would be the most appropriate.
  - c. The third step is twofold, the choice that is to be considered depends on which option was made in step 3.
    - i. For a non-custodial sentence, the guidelines have also provided a policy through which the Courts discretion is to be applied in choosing the most appropriate non-custodial sentence and eventually mitigation and aggravating circumstances are expected to be put into consideration
    - ii. For imprisonment, the same applies, that the guidelines have provided for a policy to be used in determining how long the term of imprisonment should be after the consideration of aggravating and mitigating circumstances.
11. A proper recrafted legal framework is needed to meet the challenging task of appropriate sentencing given the disparities on the various sanctions of what one considers to be the same offence with the prescribed sentence by the Legislature.
12. From the application for review on sentence under Section 362 as read with Section 364 of the CPC and in conjunction with Article 50 (2) (p) & (q) together with Sub Section 6(a) & (b) of the same Constitution I do hereby exercise discretion to review the custodial sentence and have it substituted



with that of non-custodial measures on probation of twenty-one (21) months. I am of the considered view that during the period in which the convict will be service on probation steps be undertaken for a reconciliation under the umbrella of Victim- Offender Mediation with the complainant one Samson Mecha Bota. The Probation Office shall also be required to engage a professional psychologist and counsellor to promote positive values on the part of the convict to desist from reoffending.

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 1<sup>ST</sup> DAY OF DECEMBER 2025**

.....

**R. NYAKUNDI**

**JUDGE**

