

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CRIMINAL REVISION NO. E303 OF 2025

FELIX OTIENO
APPLICANT

=VERSUS=

REPUBLIC
RESPONDENT

Coram: Hon. Justice R. Nyakundi

MS Sidi for State

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 13th day of September 2025 at around 2000hrs at the Mwanzo area, Langas estate in Kapseret Sub County within Uasin Gishu County, unlawfully assaulted (S.K) thereby occasioning him actual bodily harm.
2. The Applicant pleaded guilty to the offence and was to pay a fine of Ksh 80,000/= in default to serve 12 months' imprisonment on 8th 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:

CURRENT HOME AND PERSONAL CIRCUMSTANCES:

My lord the inmate is 29 years old a resident of Uasin Gishu county but hails from Homabay

County. He is the 2nd born son in a family of 3 siblings. Both his parents one Jack Otieno and Monica Otieno are deceased. The inmate attended Kitare primary school in Homabay and joined Dr. 0100 secondary school where he completed form four. He later relocated to Eldoret where he was employed at Wareng Security firm where he worked until his arrest. He is single with no dependents. The family members are in support of his early release and are ready to support him during his rehabilitation plan. He is of good health.

PRISON ASSESSMENT, REHABILITATION, AND RE-INTEGRATION:

The inmate is involved in farming at the prison. The prison records indicate that the inmate is fit for release. The family and community are willing to be part of rehabilitation. The inmate's family indicated the inmate is welcome home and are willing to assist him secure a job.

E. OFFENDERS ATTITUDE TOWARDS NON-CUSTODIAL MEASURES

The inmate is remorseful and takes responsibility for his offence. He regrets his anger and poor decision-making skills but ready to be assisted. The inmate is ready to serve the community if the court considers him for a non-custodial sentence.

F. RECOMMENDATIONS:

- *My Lord, the inmate can be considered for a non-custodial sentence and placed on Community Service Order for 7 months at Langas health Centre this is subject to this court's discretion.*

Decision

- 1.** 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 misdemeanor.

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.

2. 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.

1. 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.*

2. 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.*

3. 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.

4. I have considered the record, the social inquiry report dated 25th November 2025, the circumstances of the offence as framed under Section 251 of the Penal Code and I am persuaded to invoke the aims and principles of the Sentencing Policy Guidelines 2023 to review the custodial sentence and have it substituted with non-custodial as recommended by the Probation Officer being an order of C.S.O at Langas Health Centre for seven (7) months. The Community Service Officer shall file monthly reports on the performance of the convict on C.S.O. It is in this respect an order be and is hereby made to remove the convict from custodial facilities to commence serving the seven months on Community Service. It is so ordered.

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

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**R. NYAKUNDI
JUDGE**