REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ITEN
CRIMINAL REVISION E041 OF 2025

FELIX KEMBOI YEGO……. ……...APPLICANT

VERSUS

REPUBLIC……...RESPONDENT

RULING

1. The Appellant was charged in **Iten Senior Principal Magistrate's Criminal Case No. E076 of 2024**, with the offence of assault causing bodily harm contrary to **Section 251** of the **Penal Code.** The particulars were that on 13/08/2024 at around 2000 hours at Endo Location in Marakwet East Sub County, within Elgeyo Marakwet County, he assaulted **Titus Kimutai Yego** by hitting him with a stone on his back, thereby occasioning him bodily harm. The victim was said to be the Applicant's brother. The Appellant pleaded guilty and was sentenced to serve 3 years imprisonment.

2. The Applicant has now approached this Court with the Notice of Motion dated 7/07/2025 seeking, in a nutshell, review his sentence.

3. The parties filed written Submissions. The Applicant filed undated handwritten Submissions, while the State, through **Prosecution Counsel Racheal Mwangi**, filed the Submissions dated 3/11/2025.

4. The Applicant, in his Submissions, asked the Court to be guided by the case of **Republic vs Patrick Gilbert Cholmondeley CR Case No. 55 of 2016**, in which, he submitted, the Court sentenced the accused to serve 8 months in prison. He submitted that the injuries in this case were not serious, and that the sentence meted out was thus too harsh.

5. **Ms Mwangi**, on her part, submitted that sentence is a matter within the discretion of the trial Court, and that the Applicant has not demonstrated that the sentence was illegal, irregular, or manifestly excessive, nor has he shown that the trial Court acted in a manner that was unjust or procedurally improper. She cited the provisions of **Section 362** of the **Criminal procedure Code (CPC)**, and contended that the sentence was proper and in accordance with the law. She also cited **Section 251** of the **Penal Code**, and posited that the sentence was in accordance with established sentencing principles and was, in fact, lenient, considering that **Section 251** provides for a maximum sentence of up to 5 years' imprisonment. She also cited the case of **Benard Kimani Gacheru vs. Republic (2002) eKLR**.

Determination

6. The sole issue for determination in this matter is **"whether this Court should review the sentence of 3 years imprisonment imposed on the applicant by the trial Court".**

7. The High Court's jurisdiction in respect to the powers of Revision is supervisory and is provided under the **Constitution** in **Article 165 (6)** and **(7)** in the following terms:

> **6) The High Court has supervisory jurisdiction over the subordinate courts 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."**

8. **Section 362** of the **Criminal Procedure Code**, then provides as follows:

> **Revision**
>
> **362. Power of High Court to call for records**
>
> **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.**

9. In considering applications invoking this Court's revisionary powers, the operative phrase is therefore ***"correctness, legality or propriety"*** of any finding, sentence or order made by the lower Court. The purpose and nature of the revisionary jurisdiction of the High Court was then examined by **Odunga J (as he then was)**, in the case of **Joseph Nduvi Mbuvi vs Republic [2019] eKLR** as follows**:**

> **"In my considered view, the object of the revisional jurisdiction of the High Court is to enable the high Court in appropriate cases, whether during the pendency of the proceedings in the subordinate court or at the conclusion of the proceedings to correct manifest irregularities or illegalities and give appropriate directions on the manner in which the trial, if still ongoing, should be proceeded with. In other words, the High Court's revisionary jurisdiction includes ensuring that where the**

> **proceeding in the lower court has been legally derailed, necessary directions are given to bring the same back on track so that the trial proceeds towards its intended destination without hitches. Not only is the jurisdiction exercisable where the subordinate court has made a finding, sentence or order but goes on to state that it is also exercisable to determine the regularity of any proceedings of any such subordinate court as well."**

10. On his part, **Nyakundi J**, in **Prosecutor vs Stephen Lesinko [2018] eKLR**, outlined the limited instances when the High Court may exercise its revisionary jurisdiction, to include, **(a) where the decision is grossly erroneous;** (**b) where there is no compliance with the provisions of the law;** (**c) where the finding of fact affecting the decision is not based on evidence or it is result of misreading or non-reading of evidence on record;** (**d) where the material evidence on the parties is not considered; and** (**e) where the judicial discretion is exercised arbitrarily or perversely if the lower court ignores facts and tries the accused of lesser offence.**

11. Regarding sentence, as was restated by the Court of Appeal in **Bernard Kimani Gacheru v Republic [2002] eKLR**, it is a matter that rests at the discretion of the trial Court, and a higher Court will therefore not easily interfere with the sentence unless it is manifestly excessive in the circumstances of the case, or the trial Court overlooked some material factor, or took into account the wrong material, or acted on the wrong principle:

12. In this matter, the Applicant, having been convicted on his own plea of guilty, was then sentenced to serve 3 years imprisonment for the offence of assault. **Section 251** of the **Penal Code** under which the Appellant was charged, provides that:

> **"Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour and <u>is liable to imprisonment for five years</u>. "**

13. In view thereof, it is clear that the sentence imposed by the trial Court was within the law. This observation does not however mean that I cannot interrogate whether the sentence was manifestly excessive or harsh, which I now do. In doing so, I cite the Supreme Court decision in the the case of **Francis Karioko Muruatetu & Another v Republic [2017] eKLR)** in which it guided that, in re-sentencing, the following mitigating factors would be applicable; **(a) age of the offender; (b) being a first offender; (c) whether the offender pleaded guilty; (d) character and record of the offender; (e) commission of the offence in response to gender-based violence; (f) remorsefulness of the offender; (g) the**

possibility of reform and social re-adaptation of the offender; and **(h) any other factor that the Court considers relevant.**

14. Similarly, the Court of Appeal, in the case of **Daniel Kipkosgei Letting Vs. Republic [2021] eKLR**, pronounced itself as follows;

> **"With regard to the above, we observe that the purpose and objectives of sentencing as stated in the Judiciary Sentencing policy should be commensurate and proportionate to the crime committed and the manner in which it was committed. The sentencing should be one that meets the end of justice and ensures that the principles of proportionality, deterrence and rehabilitation are adhered to. ……..."**

15. Further, **Majanja J**, in quoting **Francis Karioko Muruatetu (supra)**, in the case of **Michael Kathewa Laichena & another v Republic [2018] eKLR**, stated as follows:

> **"The Sentencing Policy Guidelines, 2016 ("the Guidelines") published by the Kenya Judiciary provide a four tier methodology for determination of a custodial sentence. The starting point is establishing the custodial sentence under the applicable statute. Second, consider the mitigating circumstances or circumstances that would lessen the term of the custodial sentence. Third, aggravating circumstances that will go to increase the sentence. Fourth, weigh both aggravating and mitigating circumstances. ……"**

16. Applying the above principles to the facts of this case, I may repeat that the Applicant was liable to a sentence of up to 5 years imprisonment. The trial Court exercised its discretion, and in its wisdom, sentenced him to the lesser prison sentence 3 years. It is also not in dispute that the Applicant was given the opportunity to mitigate, which he did. The Court also sought for and obtained a Pre-sentence Report which indicated that the Applicant has a series of criminal activities, some dealt with by the local Administration, and some at Court level, and one in which he threatened his own father with a bow and an arrow, upon which he was charged with the offence of threatening to kill, and was convicted. The local Administration is thus said to have painted the Applicant as an undesirable nuisance who has seriously terrorised his community and has refused to reform. Even his own family is reported to prefer a long custodial sentence for the Applicant. Although his plea of guilty saved the Court precious judicial time thereby freeing the Court to embark on other important matters, I believe the trial Magistrate took all these matters into account.

17. Regarding the invocation of reversionary powers of the High Court, in the same case of **Joseph Nduvi Mbuvi vs Republic (supra)**, **Odunga J** stated further as follows**:**

> **"14. It is, however my view that the jurisdiction should not be invoked so as to micro-manage the Lower Courts in the conduct and management of their proceedings for the simple reason that if every ruling of the Lower Court and which went against a party were to be subjected to the revisionary jurisdiction of the Court, floodgates would be opened and the Court would be inundated with such applications thus making it practically impossible for the Lower Courts to proceed with any case to its logical conclusion. ……..."**

18. It is therefore clear that the revisionary jurisdiction of the High Court should only be invoked where there are glaring acts or omissions. In this case, it has not been demonstrated in any way, or even alleged that there were any manifest "***irregularities***" or "***illegalities***" or even "***arbitrariness***" or any "***glaring acts or omissions***" which this High Court should remedy. There is also no evidence that the Applicant's mitigation was ignored. The ***"correctness, legality or propriety"*** of the sentence has also not been impeached. Looking at the record, I cannot find any reason that may prompt this Court to invoke its revisionary powers to reduce the sentence imposed. The Applicant has not shown that the sentence imposed was not appropriate or was not proportionate to the offence he committed. This being a "***Revision***" application, the Applicant has therefore failed to demonstrate that there was any flaw with the "***correctness, legality or propriety***" of the sentence imposed by the trial Court.

Final Orders

19. It is therefore this Court's findings that the instant Application lacks merit, and it is accordingly dismissed.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 27TH DAY OF FEBRURY 2026

……..……..
WANANDA JOHN R. ANURO
JUDGE

Delivered in the presence of:

Applicant Absent
Ms. Mwangi for the State
Court Assistant: Brian Kimathi