



REPUBLIC OF KENYA



**KENYA LAW**  
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**Okadapau v Republic (Criminal Revision E209 of 2025)  
[2026] KEHC 4340 (KLR) (31 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4340 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E209 OF 2025  
RN NYAKUNDI, J  
MARCH 31, 2026**

**BETWEEN**

**KELVIN OKADAPAU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Before this court is an application dated 4<sup>th</sup> day of September 2025 premised under sections 362, 364 and 365 of the Criminal Procedure Code, Article 50(2)(q), Article 159(2)(d) & Article 165(6) of *the Constitution* of Kenya 2010 in which the Applicant is seeking the following orders:
  - a. The honorable court be pleased to call for and examine the record of proceedings in Eldoret Chief Magistrate's Criminal Case No. E1627 of 2025, wherein the Applicant was convicted on his own plea of guilty and sentenced to two (2) years imprisonment for the offence of assault contrary to section 251 of the Penal Code, with a view of satisfying itself as to the correctness, legality, and propriety of the proceedings and sentence.
  - b. The Honourable Court be pleased to revise and set aside the custodial sentence imposed upon the Applicant and substitute the same with a non-custodial sentence, a fine, or such other lenient sentence as the Court may deem fit in the circumstances.
  - c. This Honourable Court be pleased to grant any other order that meets the ends of justice.
2. Which application is based on the following grounds:
  - a. That the Applicant has demonstrated remorse, repentance, and reform and has already benefited from the rehabilitative purpose of incarceration.
  - b. That the continued incarceration is not in the interest of justice, given the reconciled domestic circumstances and the principle of promoting family unity.



- c. That under Article 50(2)(q) of *the Constitution* the Applicant is entitled to the benefit of the least severe sentence. That sentencing must be guided by fairness, proportionality and restorative justice as articulated in case law.
3. In support of the application is the supporting affidavit of the applicant in which he deponed as follows: -
- a. That I was charged, convicted, and sentenced to serve two (2) years imprisonment on 22 08 2025 in Eldoret Chief Magistrate's Court Criminal Case No. E1627 of 2025
- b. That the charge arose from a domestic misunderstanding with my wife, who had delayed returning home, leaving me with 1½ year-old baby. which inconvenienced my business schedule.
- c. That upon confronting her about the delay a scuffle ensued resulting in the present case.
- d. That I pleaded guilty to the offence of assault and was accordingly sentenced to two years' imprisonment.
- e. That I am a first offender, aged 23 at the time of the offence with no prior criminal record.
- f. That I am deeply remorseful, repentant, and have learned valuable lessons from incarceration.
- g. That I have since reconciled with my wife, the complainant, and we have forgiven each other, thereby restoring peace in the family
- h. That the custodial sentence is not suitable in the circumstances of reconciliation and first offender status.
- i. That this Honourable Court has wide discretion under Sections 362 and 364 of the Criminal Procedure Code to review, vary, or set aside the sentence imposed.
- j. That *the Constitution* under Article 159(2)(c) recognizes reconciliation and alternative dispute resolution, which fits the circumstances of this case.
- k. That in *Bernard Kimani Gacheru v Republic* [2002] eKLR. the Court of Appeal held that sentencing is at the discretion of the trial court, but such discretion must be exercised judiciously and in accordance with the law.
- l. That in *Francis Karioko Muruatetu & Another v Republic* [2017] eKLR. the Supreme Court underscored the importance of individualized sentencing and proportionality.
- m. That in *Republic v Daniel Kimani Gichuki* (2018) eKLR. the court emphasized that custodial sentences are not always the best form of punishment, especially where restorative justice is appropriate
- n. That in the circumstances. I pray for a revision of sentence to a non-custodial term, fine, or such order as the Court may deem just.

## Decision

4. The accused was convicted on his own plea of assault on which he was sentenced to 2 years' imprisonment by the trial magistrate. He has now moved the court on grounds that he is repentant, remorseful and ready to integrate within the community environment. In the affidavit he has asked the court to invoke the sections 362 and 364 of the Criminal Procedure Code and the principles in



the Bernard Kimani Gacheru Vs Republic 2002 eKLR. The imposition of a sentence by a trial court is not a mechanical process, it is a process in which the court is required to weigh and balance a variety of factors so as to determine a measure of the moral, blameworthiness of an accused or offender as to oppose to legal questions. So what is that measure which the trial court must take into account? It does consist of the gravity of the crime, the circumstances of the offender/accused and the interest of the society or more specifically the victim of the offence. These factors, which are traditionally taken into account in the sentencing process, continue to play a major role in the exercise of judicial discretion in determining whether to impose a custodial sentence, a non-custodial order, or a complete discharge.

5. In the case of a complete discharge, there must exist compelling and substantial circumstances to justify a departure from the sentence prescribed by the legislature. The role of the legislature is to set the yardstick to guide the courts in the exercise of their judicial function. Accordingly, courts should rarely depart from the prescribed sentence unless and until compelling and substantial circumstances exist to justify such a departure.
6. The law on interference of sentence trial court is now settled in the case of Bernard Gacheru vs Republic [2002] eKLR the Court held that:

“It is now settled law, following several authorities by this Court and by the high Court, that sentence is a matter that rests in the discretion of the trial Court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate Court will not easily interfere with sentence unless, the sentence is manifestly excessive in the circumstances of the case, or that the trial Court overlooked some material factor, or took into account some wrong material, or acted on a wrong principle. Even if, the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial Court on sentence unless, anyone of the matters already states are shown to exist.”

7. In the instant case, the affidavit evidence, having been weighed against the principles set out in the Benard Gacheru Case, can be described as falling short of the threshold required to persuade this Court to review the sentence under Sections 362 and 364 of the Criminal Procedure Code. Accordingly, this application for review of sentence lacks merit and is hereby dismissed pursuant to Section 382 of the Criminal Procedure Code. It is so ordered.

**DATED, SIGNED AND DELIVERED VIA EMAIL AND CTS AT ELDORET THIS 31<sup>ST</sup> DAY OF MARCH 2026**

.....

**R. NYAKUNDI**

**JUDGE**

