



**Kiptum v Republic (Miscellaneous Criminal Application  
E037 of 2024) [2025] KEHC 2521 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2521 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
MISCELLANEOUS CRIMINAL APPLICATION E037 OF 2024**

**RB NGETICH, J  
FEBRUARY 27, 2025**

**BETWEEN**

**HILLARY KIPTUM ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant Hillary Kiptum was charged with two counts of offences. Count I is the offence of Robbery with violence contrary to Section 296(2) of the *Penal Code*. The particulars of the charge were that the accused on the 25<sup>th</sup> day of March, 2023 at around 1500 Hours at Kipsaraman area within Baringo North Sub-County in Baringo County, robbed Sammy Chesire Kimutai of Cash Kshs.4,000/= and a mobile phone make Tecno valued at Kshs.1,500/= and immediately before the time of such robbery used actual force to the said Sammy Chesire Kimutai.
2. Count II is the offence of Grievous Harm contrary to Section 234 of the *Penal Code*. The particulars were that on the 25<sup>th</sup> day of March, 2023 at about 1500 Hours at Kipsaraman area in Baringo North Sub-County, the accused assaulted Sammy Chesire Kimutai by use of a blunt object causing him grievous harm.
3. The accused denied the charges and the matter was set down for full trial. By judgment delivered on the 28<sup>th</sup> February, 2024 the trial court found the applicant guilty for the offence of grievous harm sentenced him to 10 years imprisonment on 13<sup>th</sup> March, 2024.
4. The applicant has now approached this court vide an application dated 14<sup>th</sup> May, 2024 seeking review of the sentence and for the time he spent in prison during trial to be considered as part of the sentence in accordance with Section 333(2) of the *Criminal Procedure Code* and Judiciary sentencing guidelines. He states that he served 9 months in remand from 25<sup>th</sup> June, 2023. He brings the application under Section 362 as read with Section 364 of the *Criminal Procedure Code* and Article 50(2) (q) of the



Constitution of Kenya. The applicant avers that for the short period he has been in prison, he has realized the magnitude of his illegal actions. He says his young family and young siblings rely on him and are now in dire situation and are vulnerable due to his absence. He says he is remorseful, repentant and regrets his actions and is willing to compensate the complainant.

### **Social Inquiry Report**

5. From the report, the Applicant dropped out of school in class 8 in the year 2014 and started doing casual jobs within Kabartonjo area. In the year 2015 to 2017 he worked at a food kiosk and hardware within Kabarnet. After the demise of his mother in 2018 he relocated back home and the Area MCA enrolled him to a security firm in Nakuru where he worked from 2019 to February, 2020. In March 2020 he relocated back to Kabarnet and started working as a casual worker within Kabarnet town. He is married with one child. At the moment he is learning carpentry while in custody and has not yet sat any examinations. He indicates that once released he will resettle at Kabarnet to stay with his brother.
6. From the report, the applicant's parents passed on due to road accident and heart disease leaving him with step mother and 5 biological and 6 step siblings. His family depend on farming and casual jobs within the community as their main source of income. The Applicant's step mother supports non-custodial sentence; During trial, they sent elders three times for reconciliation purpose without success but did not continue with reconciliation process after sentencing. The uncle attributed the offence to excessive alcohol consumption and negative peer influence. The Applicant's sister and two brothers prayed for his early release or reduction of sentence. They all indicated reconciliation with the victim has been difficult due to hard stand from the victim's family members. They said the victim had forgiven the applicant but the victim's family is very rigid. From the social inquiry, the Applicant's family want the Applicant back home but they are less concerned with reconciliation as they did not progress with reconciliation after sentence.
7. The circumstances of the offence are that the Applicant and the victim were in a local bar taking alcohol and while under the influence of alcohol, the deceased pushed the Applicant making him fall down the cliff and he sustained injuries which led to paralysis. The applicant stated that he committed the offence while under the influence of alcohol.
8. The Applicant admits the offence as charged and says he learnt that the victim was injured after a period of three months. He says he sent elders three times for reconciliation without any success. He prays for noncustodial sentence or reduction of sentence to enable him restart his life afresh.
9. From the report, the victim was aged 27 years and works as a Mason within Kipkata Location. He is opposed to the Applicant's review to non-custodial sentence; he prays for enhancement of sentence as he is now paralyzed as a result of broken spine and his chances of recovery to normal state are limited. He depends on his siblings and parents for basic needs yet he was the one who used to provide for them. He says the applicant's family visited him once to see the injuries he sustained but they have not returned. The injuries and the fact that the victim relies on his family was confirmed by his brother; he also confirmed that the applicant's family have not taken steps towards reconciliation.
10. Both the village elder and the area chief confirmed that the victim is currently paralyzed due to injury to spinal code. He also confirmed that reconciliation has not taken place. In the absence of reconciliation they are opposed to review of sentence and they are of the view that the applicant should complete his sentence in prison or it should be enhanced since the victim is suffering as a result of serious injuries.



## Determination

11. The application herein invokes the revisional jurisdiction of this court which gives the court powers, in appropriate cases, to review and vary any orders, decision or sentence passed by the trial court if the court was satisfied that the impugned order, decision or sentence was illegal or was a product of an error or impropriety on the part of the trial court. If the court was so satisfied, the law mandates it to make appropriate orders to correct the impugned order, decision or sentence and align it with the law. The above is the import of Section 362 as read with Section 364 of the [Criminal Procedure Code](#).
12. I have considered the mitigation by the Applicant. The Applicant has pleaded to this court to grant him a non-custodial sentence. I have also considered the social inquiry report. The report indicates that the applicant's siblings plus the step-mother prayed for his early release but they never showed any interest in facilitating reconciliation taking place but they just want their kin back home. The victim and the local administration opposed the inmate's prayers noting that the victim was seriously injured and at the moment he is paralyzed. They said the Applicant and his family have not made attempts to hold any reconciliation meeting and to them they feel the sentence should be enhanced.
13. The objectives of sentencing are outlined in the 2023 [Judiciary of Kenya Sentencing Policy Guidelines](#) at page 15, paragraph 4.1 as follows:-

Retribution: To punish the offender for his/her criminal conduct in a just manner.

Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.

Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.

Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demand that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.

Community protection: To protect the community by incapacitating the offender.

Denunciation: To communicate the community's condemnation of the criminal conduct.”

14. I have considered sentiments of the applicant and the victim's family, the village elder and the chief. The applicant's family support release or reduction of applicant's sentence though they have not made any efforts to reconcile with the victim and his family. This was confirmed by the local administration. They also confirmed that the victim is paralyzed and relies on his family for basic needs, care and medication. In view of the above sentiments, I am of the view that this not a suitable case for revision of sentence. I will allow prayer for sentence to run from the date of arrest as per section 333(2) of the [criminal procedure code](#).
15. Final orders: -
  1. Application for revision of sentence is hereby dismissed.
  2. The sentence to run from the date of applicant's arrest.

**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 27<sup>TH</sup> DAY OF FEBRUARY 2025.**

**RACHEL NGETICH**



## **JUDGE**

In the presence of:-

- Ms. Bartilol for the State.
- Applicant – present.
- Court Assistants – Elvis/Momanyi

