



REPUBLIC OF KENYA



**Kiplimo v Republic (Criminal Revision E003 of 2025)
[2025] KEHC 5531 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5531 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL REVISION E003 OF 2025**

RB NGETICH, J

APRIL 30, 2025

BETWEEN

BENARD KIPLIMO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Benard Kiplimo was charged in Count I with the offence of Threatening to kill contrary to section 223(1) of the *Penal Code*. The particulars of the charge were that the accused on the 7th day of January, 2024 at Soymining village, in Koibatek Sub-county within Baringo County, without lawful excuse while armed with a panga and arrows uttered words, “*nitawapeleka kwa kaburi*”, threatening to kill Esther Cheruiyot and Philemon Cheruiyot.
2. Count II is the offence of malicious damage to property contrary to Section 339(1) of the *Penal Code*. The particulars of the charge are that the accused on the 7th day of January 2024, at Soymining village in Koibatek Sub-county within Baringo county, willfully and unlawfully damaged four windows valued at Kshs.12,000/= the property of Philemon Cheruiyot.
3. The accused pleaded guilty to the charges and he was convicted on his own plea of guilty. On 29th January, 2024 the trial court sentenced the Applicant to serve 4 years imprisonment in Count I and 1 year imprisonment in Count II, the sentences to run concurrently.
4. The Applicant has now approached this court *vide* an application dated 10th March, 2025 seeking review of sentence stating that he is now remaining with 1 year one month to complete sentence. He seeks a non-custodial sentence on the ground that he has a wife with a child who was born a month to his arrest and that the wife is jobless and was depending on him He states that his mother became depressed and suffered hypertension after his conviction. He stated that he has learnt carpentry though he has not obtained a certificate because he has not done the examination.



Social Inquiry Report.

5. From the report, the applicant sat for his Kenya Certificate of Secondary Education at Kipsolu Secondary School-Kericho in the year 2015 and obtained a mean grade of C- (minus). He repeated form four examinations in the year 2016 and got a mean grade of D (plain). He is yet to acquire any formal training. He is married with one child aged 4 months' old.
6. Before his arrest, the applicant occasionally abused alcohol and was violent while drunk. At the time of interviewing him, he admitted that he sometimes experience chest pains that emanated from a motorcycle accident that he experienced in the year 2019 and was attended to at Eldama-Ravine Sub-County Referral Hospital. He consequently depends on pain killers for relieve when the stated challenge arises.
7. According to Probation and Aftercare Service risk and need assessment instrument, the Applicant is classified as minimum risk in terms of recidivism and is of medium need in terms of his rehabilitation requirements.
8. The Applicant informed the Probation officer that he is the only person in his family that did not attend to the church services and abused alcohol. His action of abusing alcohol was perceived as a destructive habit to his life by his mother and siblings that often encouraged him to stop it for his future benefits. At the time of committing this offence he was over intoxicated in alcohol making his family members take initiative of warning him against such habit he reacted negatively committing the stated offences. He admitted that he committed the present offences due to irrational thinking caused by alcohol abuse.
9. The Applicant pleads for leniency from the court. He regrets the offence. He promised to stop abusing alcohol to avoid reoffending. At the prison he has become a believer of Seventh Day Adventist Church which is his family's church as well. He has reconciled with the victims of this case. He is willing to apply carpentry, carpentry and joinery skills gained at prison to supplement his source of income.
10. The victims herein who are the Applicant's mother and brother respectively confirmed that the Applicant sought forgiveness from them and they resolved to forgive him for the sake of family reconciliation. They revealed that they are concerned that when the Applicant was imprisoned, his wife returned to her biological parents for support. They believe that if the Applicant is given a chance for rehabilitation in an open community setting, his young family will be restored from disintegrating. The victims are not opposed to applicant being considered for leniency. The Applicant's family members prayed that he be considered for lenient sentence and the victims in this matter are willing to support in his rehabilitation plan if he is given a chance in a non-custodial sentence. His wife prayed for Applicant to be released from prison for the sake of his family as he was the sole breadwinner.
11. The local administration confirmed that he was involved in the reconciliatory meeting and they are not opposed to him being considered for leniency.
12. The administration of Eldama Ravine Prison Services described the Applicant positively as hardworking and trustworthy and confirmed that he has acquired skills in carpentry and joinery. He was recommended for a non-custodial sentence.

Determination

13. The application 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 mandated 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.

8. 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 demands 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."

8. I take note of the fact that the applicant was a first offender, is remorseful, and repentant. From the social inquiry report, the victims have forgiven the applicant and are willing to assist him reintegrate back to the community. The local administration has confirmed that the family. The in charge Eldama ravine prison also confirmed that the applicant has learnt skills which will assist him while out of prison. In view of the above, I am inclined to revise the applicant's sentence to noncustodial sentence for the remaining period.

Final Orders: -

8. Applicant to serve probation sentence for the remaining period of sentence.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 30TH DAY OF APRIL, 2025.

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RACHEL NGETICH

JUDGE

In the presence of:

Ms. Kosgey holding brief for Ms. Omari for the State.

Applicant – present.

Court Assistant – Elvis.

