



**Kobiro v Republic (Criminal Revision E023 of 2025)
[2025] KEHC 11883 (KLR) (11 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 11883 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E023 OF 2025
RN NYAKUNDI, J
AUGUST 11, 2025**

BETWEEN

JOHN KOBIRO APPLICANT

AND

REPUBLIC RESPONDENT

(Being a revision from the Judgement delivered by Hon. E. Kigen SRM on 13th January 2023)

RULING

Representation:

M/s Sidi for the State

1. The Applicant herein was charged with the offence of causing Grievous Harm contrary to section 234 of the Penal Code. The Particulars of the offence are that John Turgut Kobiro on the 19th July 2021 at Shirika Village in Soy-Sub County within Uasin Gishu County, unlawfully did grievous harm to Peter Arap Soi.
2. He was found guilty, convicted and sentenced to serve 5 years' imprisonment. He has now approached this Honourable Court for a non-custodial sentence (probation). The Applicant has relied on the following grounds of petition
 - a. That I am remorseful, first offender entirely repentant, reformed and rehabilitated and have learned the incarceration and pray to be allowed by the honorable court to play a role model in the society.
 - b. That I have a family that depends on me as the breadwinner.
 - c. That I am seeking indulgence of this honorable court to allow me finish the remaining part of the sentence on non-custodial sentence (probation).



Decision

3. The power of the High Court to review orders issued by the subordinate court is derived from Article 165 of *the Constitution* which states: -

“ 165 (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.”

4. In considering the application, I note the revisionary power of the High Court is provided for under sections 362 of the Criminal Procedure Code which states as follows:

“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.”

5. However, the above section should be read together with section 364 of the Code which provision states as follow: -

“(1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may-

(a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;

(b) in the case of any other order other than an order of acquittal, alter or reverse the order.

(2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence: Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.

(3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.

(4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.



- (5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.”
6. It is therefore clear from the above provisions that, the court will only exercise its revisionary powers where, the impugned sentence is either incorrect, illegal or improper. Thus the objective of revisionary jurisdiction is to set right a patent defect or error of jurisdiction or law. This jurisdiction will only be invoked where the decision under challenge is; grossly onerous, there is no compliance with the provisions of the law, or the finding re-ordered are based on no evidence, or material evidence is ignored or judicial discretion is exercised arbitrarily or perversely.
 7. Section 234 of the Penal Code provides that any person who unlawfully does grievous harm to another is guilty of a felony and is liable to life imprisonment. It therefore means that, depending on circumstances, subject to the discretion of a trial court, a person found guilty of grievous harm can be sentenced to life imprisonment. Upon perusal of the record from the subordinate court, I find that the proceedings were proper and regular. With respect to the sentence, I am guided by the decision of the Court of Appeal in the case of *Ogolla S/o Owuor v Republic* [1954] EACA 270 where the court held thus: - “The court does not alter a sentence unless the trial Judge has acted upon wrong principles or overlooked some material factors.”
 8. In the case of *Prosecutor v Stephen Lesinko* [2018] eKLR, the Court, summed up the principles that would guide the court when applying section 362 of the Criminal Procedure Code as follows: -
 - 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 as not based on the 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.
 - e. Where the judicial discretion is exercised arbitrarily or perversely if the lower court ignores facts and tries the accused of lesser offence.
 9. This Court must determine whether the sentence imposed on the Applicant was legally flawed- whether through error, irregularity, arbitrariness, or a disregard of the applicable legal standards. The Applicant has requested that the Court consider that he is remorseful, first offender entirely repentant, reformed and rehabilitated and have learnt the incarceration and pray to be allowed by the honorable court to play a role model in the society and that he has a family that depends on him as the breadwinner.
 10. I take note that sentencing must be guided by well-established principles such as proportionality, fairness, consistency, equality before the law, and transparency. These principles ensure that justice is administered uniformly and impartially. Under Section 26(2) of the Penal Code, courts have discretion to issue a sentence that is less than the maximum prescribed, except where mandatory minimums apply. Moreover, according to Paragraph 2.3.12 of the 2023 Sentencing Policy Guidelines, imprisonment should be reserved for offences of such severity that alternative sentences such as fines or community service would not be



appropriate. Paragraph 2.3.15 outlines key considerations in determining whether a custodial sentence is warranted. These include:

1. The seriousness of the offence
 2. The offender's prior criminal history
 3. The offender's personal circumstances, including any dependents
 4. The character of the offender
 5. The need to protect the public
 6. The offender's responsibilities to third parties
11. In this matter, the trial magistrate recognized that the Applicant was a first-time offender and expressed remorse. In particular, the trial Magistrate stated as follows; I have considered the mitigation and also the sentiments of the complainant who testified and stated that the accused had previously burnt his house and was placed on probation, it is my finding that the accused deserves a deterrence sentence to enable him benefit from the reforms at the correctional facility. The accused is hereby sentenced to serve 7 years' imprisonment but considering that he has been in remand for 1 and ½ years he will serve 5 years' imprisonment.
12. This Court finds no legal error, irregularity, or abuse of discretion in the sentencing decision. The trial court properly applied the relevant legal principles and exercised judicial discretion fairly and appropriately. After reviewing the Applicant's mitigation and the circumstances surrounding the offence, this Court finds no sufficient basis to interfere with the sentence imposed. Accordingly, the application for sentence review is dismissed. The Applicant shall serve the full term of the sentence as originally ordered. Orders accordingly.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 11TH AUGUST 2025

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R. NYAKUNDI

JUDGE

