



REPUBLIC OF KENYA



KENYA LAW
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**Mirera v Republic (Criminal Revision E003 of 2024)
[2024] KEHC 13908 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13908 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CRIMINAL REVISION E003 OF 2024
WA OKWANY, J
OCTOBER 31, 2024**

BETWEEN

VINCENT NYANG'AU MIRERA APPLICANT

AND

REPUBLIC RESPONDENT

*(From the original Conviction and Sentence in the Chief Magistrates'
Court at Nyamira, Criminal Case No. E1252 of 2021 by Hon.
C.W. Waswa, Resident Magistrate on 21st December 2021)*

RULING

1. The Applicant was convicted on his own plea of guilty for the offence of assault causing actual bodily harm contrary to Section 251 of the [Penal Code](#), Cap 63 Laws of Kenya. The trial court sentenced him to serve 5 year's imprisonment.
2. The Applicant now seeks a revision of his sentence through a Notice of Motion Application where he prays for a non-custodial/probationary sentence on the grounds that he is remorseful for his actions and has fully reformed following his incarceration.
3. Counsel for the Respondent, Mr. Chirchir, did not oppose to the Application.
4. Article 50 (2) of the [Constitution](#) states as follows: -
 - (2) Every accused person has the right to a fair trial, which included the right-
 - (q) if convicted, to appeal to, or to apply for review by a higher court as prescribed by law.
5. This Court is also vested with revisionary powers under Article 165 of the [Constitution](#) which provides as follows: -

Article 165



- (1) 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.
6. The legal framework for the High Court's revisionary jurisdiction is further provided for under Section 362 and 364 of the [Criminal Procedure Code](#) as follows: -

362. Power of the 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.

364. Powers of the High Court on Revision

- (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 defense:
- 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 that 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 a 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.

7. Section 251 of the [Penal Code](#) provides as follows: -

“Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour and is liable to imprisonment for five years.”

8. It is trite that sentencing is at the discretion of the trial court and that an appellate court will not ordinarily interfere with such discretion except under specific circumstances. In *R. v Mohamedali Jamal* (1948) 15 EACA, 126, the Eastern Africa Court of Appeal held thus: -

“It is well established that an appellate Court should not interfere with the discretion exercised by a trial Judge or Magistrate except in such cases where it appears that in assessing



sentence, the judge has acted upon some wrong principle or has imposed a sentence which is either patently inadequate or manifestly excessive.”

9. While this Court appreciates the nature of the offence which the Applicant was convicted for, it is also reminded that punishment that is excessive goes against the principles of justice. In *S v Scott-Crossley* 2008 (1) SACR 223 (SCA) at para 35, it was held thus: -

“Plainly, any sentence imposed must have deterrent and retributive force. But of course one must not sacrifice an accused person on the altar of deterrence. Whilst deterrence and retribution are legitimate elements of punishments, they are not the only ones, or for that matter, even the overriding ones.It is trite that it is in the interest of justice that crime should be punished. However, punishment that is excessive serves neither the interests of justice nor those of society.” (Emphasis added).

10. In the circumstances of this case, I find that the 5 years’ imprisonment sentence was harsh and excessive. I therefore find that the Applicant has made out a case for the revision of his sentence. Consequently, I allow the Application and set aside the sentence of 5 years imprisonment and substitute it with 3 years’ imprisonment. In the event that the Applicant would have, as at the time of the delivery of this ruling, already served the 3 years’ imprisonment sentence, I direct that the Applicant be released from custody forthwith unless he is otherwise lawfully held.

11. Orders accordingly.

DATED AND DELIVERED AT NYAMIRA ON THIS 31ST DAY OF OCTOBER 2024.

W. A. OKWANY

JUDGE

