



REPUBLIC OF KENYA



KENYA LAW
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**Momanyi v Republic (Criminal Revision E012 of 2024)
[2024] KEHC 13900 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13900 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CRIMINAL REVISION E012 OF 2024
WA OKWANY, J
OCTOBER 31, 2024**

BETWEEN

ERICK NYAMWEYA MOMANYI APPLICANT

AND

REPUBLIC RESPONDENT

*(From the original Conviction and Sentence in the Chief Magistrates’
Court at Nyamira, Criminal Case No. E325 of 2022 by Hon.
W.C. Waswa Senior Resident Magistrate on 7th July 2022)*

RULING

1. The Applicant was convicted on his own plea of guilty for the offence grievous harm contrary to Section 234 of the *Penal Code*. The trial court sentenced him to serve 5 years’ imprisonment.
2. He now seeks a review of the sentence imposed by the trial court on the basis that he is an orphan with siblings who solely depended on him and that he is remorseful for the offence.
3. Counsel for the Respondent did not oppose the Application.
4. The only issue for determination is whether the Applicant has made out a case for the revision of sentence.
5. The legal framework for Revision of sentence by the High Court is provided for under Articles 50 and Article 165 of the *Constitution* which provide as follows: -

Article 50

- (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.

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. Sections 362 and 364 of the *Criminal Procedure Code* also lay down this Court's revisionary powers and the manner in which they are to be exercised 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. This Court is mandated to consider the legality, correctness and appropriateness of the decisions of the subordinate courts, bearing in mind the fact that sentencing is at the discretion of the trial court. (See *S v Nchunu & Another* (AR 24/11) [2012] ZAKZPHC6).
8. A perusal of the court record reveals that the Applicant took plea on 22nd March 2022 when he denied the charge and that the matter proceeded for hearing on 22nd June 2022, when one Prosecution witness testified before the Applicant requested to take plea afresh. I note that the charges were read afresh and that he pleaded guilty to the same.
9. I have perused the particulars of the offence and noted that the victim was the Applicant's 7-months old child who sustained grievous injuries (fracture on the left tibia) during the incident.
10. The trial court noted that the offence was grave and deserved a severe punishment.
11. Section 234 of the *Penal Code* stipulates as follows: -
 234. Grievous harm

Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.
12. I note that the trial court considered the fact that the Applicant pleaded guilty to the offence thereby saving court the resources that it would have spent in conducting a full trial. I find that the trial court correctly exercised its discretion in balancing the rights of the Applicant as an accused person against the nature of the offence and the rights of the victim. I therefore find no justification in interfering with the sentence passed by the trial court as the same was not only legal, but also just and appropriate.
13. Consequently, I dismiss the instant application for lack of merit but with a rider that the sentence period shall be computed taking into account the period, if any, that the Applicant spent in custody while awaiting his trial in line with the provisions of Section 333 (2) of the *Criminal Procedure Code*.
14. Orders accordingly.

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

W. A. OKWANY

JUDGE

