



**Githua v Republic (Criminal Revision E132 of 2024)
[2024] KEHC 13177 (KLR) (30 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13177 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CRIMINAL REVISION E132 OF 2024
LM NJUGUNA, J
OCTOBER 30, 2024**

BETWEEN

GABRIEL KAMAU GITHUA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant has filed an undated application seeking for an order that the court reviews his sentence and grant him a noncustodial sentence. Through the application, the applicant stated that he was convicted of the offence of grievous harm contrary to section 234 of the Penal Code and he was sentenced to 5 years imprisonment. That the sentence is an infringement on his right to dignity. That he has a young family with school-going children who all depend on him for their sustenance.
2. The respondent opposed the application through grounds of opposition in which it stated that the mitigating factors raised by the applicant do not warrant issuing of the orders sought. That the application does not meet the requirements for revision under section 362 of the Criminal procedure Code. It urged the court to dismiss the application, terming it as bad in law.
3. The court directed parties to file their written submissions but only the respondent complied.
4. In its submissions, the respondent stated that the applicant was sentenced to 5 years imprisonment which is very lenient compared to life imprisonment prescribed under section 234 of the Penal Code. That the application has failed to disclose sufficient grounds for revision and it should be dismissed.
5. From the foregoing, the issue for determination is whether the court should review the sentence meted out to the applicant.



6. The High Court’s supervisory jurisdiction power of revision in criminal cases is established under Section 362 of the [Criminal Procedure Code](#) 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.”

7. In the Malaysian case of *Public Prosecutor vs. Muhari bin Mohd Jani and Another* [1996] 4 LRC 728 at 734, 735 it was held:

“The powers of the High Court in revision are amply provided under section 325 of the Criminal Procedure Code subject only to subsections (ii) and (iii) thereof. The object of revisionary powers of the High Court is to confer upon the High Court a kind of “paternal or supervisory jurisdiction” in order to correct or prevent a miscarriage of justice. In a revision the main question to be considered is whether substantial justice has been done or will be done and whether any order made by the lower court should be interfered with in the interest of justice...If we have been entrusted with the responsibility of a wide discretion, we should be the last to attempt to fetter that discretion...This discretion, like all other judicial discretions ought, as far as practicable, to be left untrammelled and free, so as to be fairly exercised according to the exigencies of each case”.

8. The applicant was sentenced to 5 years imprisonment having been convicted of the offence of grievous harm. In mitigation, he told the trial court that he has children in school and that he is also ailing, with a continuous need to visit the hospital. The trial court considered this mitigation before sentencing him to 5 years imprisonment which is lenient compared to the statutory prescribed sentence. Section 234 of the [Penal Code](#) prescribes a sentence of life imprisonment for a person convicted of the offence of grievous harm.

9. Clause 4.8.20 the Judiciary [Sentencing Policy Guidelines](#), 2023 provides:

“The Sentencing Court shall be guided by the sentencing principles and objectives set out in Part I of these the Guidelines in all resentencing hearings. The following mitigating factors were set out by the Supreme Court as particularly relevant in a resentencing hearing:

- i. Age of the offender.
- ii. Being a first offender.
- iii. Whether the offender pleaded guilty.
- iv. Character and record of the offender.
- v. Commission of the offence in response to gender-based violence.
- vi. Remorsefulness of the offender.
- vii. The possibility of reform and social re-adaptation of the offender.
- viii. Any other factor that the court considers relevant.
- ix. Time already spent in prison by the convict.



- x. Duress, provocation, less participation in the offence (including progressive provocation).
- xi. Any attempt to make reparation for the offence.”

- 10. The reasons given by the applicant for consideration for resentencing are not sufficient in the eyes of the above cited provision. It is my view that the trial court already took into account the mitigating factors and exercised leniency to a great extent.
- 11. To his end, I find that the application lacks merit and the same is hereby dismissed.
- 12. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 30TH DAY OF OCTOBER, 2024.

**L. NJUGUNA
JUDGE**

..... for the Applicant
..... for the Respondent

