



**Republic v Dacha & another (Criminal Revision E116 of 2023)
[2024] KEHC 15111 (KLR) (22 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15111 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL REVISION E116 OF 2023
RE ABURILI, J
NOVEMBER 22, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

SOSPETER ONYANGO DACHA & ANOTHER RESPONDENT

RULING

1. Sospeter Onyango and Jacob Ochola Dacha are convicts in Bondo PM Cr. Case No E1658/2021 where he was charged with the offence of assault causing actual bodily harm to Dan Onyango Amollo and after full trial before Hon. S. Mathenge, and as the court was waiting for a pre-sentence report, Hon. Mathenge got bereaved. The matter then came up for mention before the SPM Hon. Nandi who proceeded to sentence the convict yet the trial magistrate was still serving in the station and had not heard the mitigation before sentence could be pronounced.
2. The ODPP have applied to set aside the sentence for being irregularly pronounced and I agree entirely. The court which heard the evidence for the prosecution and defence was available though bereaved. It had not considered the presentence report as ordered to guide on the appropriate sentence. It was premature for Hon. Nandi to take over the matter and sentence the convicts herein without following the laid down procedure under Section 200 of the *Criminal Procedure Code*.
3. Accordingly, I find the orders made by Hon. Nandi, SPM to be irregular. The request for sentence revision is found to be merited. I hereby allow the request dated 29/8/2023 and set aside and vacate the sentence of 2 years pronounced by Hon. Nandi SPM on 25/5/2023 and order that the entire file be transmitted to Hon. S. Mathenge, SRM to the court station where she was transferred, to hear full mitigation by the convicts and to consider the presentence report filed by the probation officer on 25/5/2023 before pronouncing appropriate sentence as by law provided, which sentence shall, off course, take into account the period already spent in custody by the accused persons/convicts herein.



4. This ruling to be printed and submitted to the Chief Magistrate, Bondo Law Courts, Hon. Dr. Ogoti for appropriate action and the convicts to be notified to appear in court. I so order.
5. This file is closed.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 22ND DAY OF NOVEMBER, 2024

R. E . ABURILI

JUDGE

