



**Akeno v Republic (Miscellaneous Criminal Application E103 of 2024)
[2024] KEHC 16350 (KLR) (20 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16350 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
MISCELLANEOUS CRIMINAL APPLICATION E103 OF 2024**

**DK KEMEL, J
DECEMBER 20, 2024**

BETWEEN

GEORGE ONYWERA AKENO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein George Onywera Akeno has filed an application dated 28/8/2024 seeking a review of his sentence to a lesser period or be given the option to pay a fine.
2. The Applicant's gravamen is inter alia; that he was convicted vide Madiany SRMC Cr. E023/2024 for the offence of assault causing bodily harm contrary to Section 25 of the Penal Code wherein upon he was sentenced to serve five years imprisonment; that the trial magistrate did not impose an option of a fine; that he does not intend to lodge an appeal; that he has learnt his lesson and is remorseful; that the complainant is his own biological daughter and that he requires to reconcile with her; that he is the sole bread winner for his family and that his continued incarceration is causing the family social and economic challenges such as the fact that the complainant who was set to join KMTC training will now miss out; that this court has powers under Article 165 (3) of the Constitution to grant the orders sought.
3. The application was canvassed by way of both written and oral submissions. The Applicant opted to file written submissions while counsel for Respondent presented oral submissions.
4. The Applicant's submissions are a reiteration of the grounds in support of the application.
5. Miss Mumu for the Respondent opposed the application. She submitted inter alia; that sentence is commensurate with the offence committed; that the trial magistrate considered the manner in which the Applicant assaulted the complainant who is his own biological daughter; that the complainant had been subjected to domestic violence simply because her mother was not there; that there are several



- instances where the Applicant assaulted the complainant but which were reserved by the Area Chief; that the Applicant should continue serving his sentence.
6. I have considered the Applicant's application for revision of sentence as well as the submissions tendered. It is not in dispute that the Applicant is not challenging the trial court's conviction and sentence and further has not lodged an appeal since, according to him, the trial court exercised its duties in good faith and in the interest of justice to the provisions of Article 165 (3) of the Constitution must be rejected. It is obvious that the Applicant's application is a straight forward one seeking revision of sentence. I find the only issue for determination is whether the application has merit.
 7. The record of lower court indicates that the Applicant herein entered a plea and 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. prior to sentencing, the trial court called for a presentence report. The same is dated 17/7/2024 and indicated that the Applicant has been cruel to the complainant who is his eldest daughter owing to his perceived issues between him and the complainant's mother who had separated with him. It further indicated that the Applicant tied the complainant both his motor cycle and rode it while dragging the complainant along the road and later doused her with petrol with intention to burn her. It finally indicated that the complainant was alter rescued and taken to a Children Rescue Centre where she was offered a place for refuge and an opportunity to pursue her education. The trial court sentenced the Applicant to five years' imprisonment as provided for under Section 251 of the Penal Code.
 8. Looking at the circumstances of the Applicant as compared to those of the complainant, I find that the Applicant was too cruel to his own daughter. What the Applicant did to his daughter was unimaginable. He is reported to have tied her on a stone and extended the rope onto his motor cycle and then he rode the motor cycle as he dragged the victim along the road to the river as if the victim was some form of a gunny bag. The Applicant who appeared depraved went ahead to douse the girl with petrol intending to set her ablaze. The complainant was rescued by members of public. Indeed, it transpired that the complainant has in the past underwent a lot of beatings from the Applicant prior to the incident herein. Apparently, the mother of the complainant had separated with the Applicant and thus the complainant had no one to protect her and had to persevere the harassment from her step mother, step siblings and the Applicant. The Applicant was expected to protect her but instead turned into a monster. I am not persuaded by the Applicant's alleged Damascus moment when he now claims to care for his daughter yet a few months ago she survived death by the skin of her teeth thanks to the cruelty of the Applicant herein. It is clear that the Applicant's claim that he intends to enroll the complainant in college is rather too little too late since she has already been assisted by well-wishers. The Applicant's bonafides are rather suspect.
 9. As regards the sentence imposed, I find the same is neither harsh nor excessive. The trial court did exercise its discretion after taking into account the Applicant's mitigation and the pre-sentence report. The trial court did not take into account any irrelevant factors warranting interference by this court.
 10. In view of the foregoing observation, it is my finding that the Applicant's application for revision of sentence lacks merit. The same is dismissed. The Applicant is ordered to continue serving his sentence to completion.

DATED AND DELIVERED AT SIAYA THIS 20TH DAY OF DECEMBER, 2024.

D. KEMEI

JUDGE

In the presence of:



George Onywera Okeno.....Applicant
Mocha.....for Respondent
Ogendo.....Court Assistant

