



REPUBLIC OF KENYA



**Muthoka v Republic (Criminal Revision E333 of 2022)
[2023] KEHC 440 (KLR) (23 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 440 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL REVISION E333 OF 2022
JN ONYIEGO, J
JANUARY 23, 2023**

BETWEEN

PETER KAKUYA MUTHOKA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was on 30th May 2022 charged with four counts. Count one, he was charged with the offence of grievous harm c/s 234 of the penal code. Particulars were that on 26th day of May 2022 at Tangiri village in Taveta sub-county within Taita Taveta county unlawfully did grievous harm to Benson Muthoko Nthiwa.
2. Count two, he was charged with Assault causing Actual bodily harm c/s 251 of the penal code. Particulars were that on the 26th day of May 2022 at Tangiri village in Taita sub-county within Taita Taveta county assaulted Maria Kamama Mwangi thereby occasioning her actual bodily harm.
3. Count three, he was charged with Malicious injury to property c/s 339(1) of the penal code. Particulars were that on the 26th day of May 2022 at Tangiri village in Taveta sub-county within Taita Taveta county wilfully and unlawfully damaged a wooden door bench and a cup all valued at Kshs 5000 the property of Benson Muthoka Nthiwa.
4. Count four, he was charged with the offence of creating disturbance in a manner likely to cause a breach of the peace contrary section 95(1) (b) of the penal code. Particulars were that on 26th day of May 2022 in Tangiri village in Taveta sub-county within Taita-Taveta county caused disturbance in a manner likely to cause a breach of the peace by stepping on a bench and a cup at Sama bar.
5. Upon returning a plea of not guilty, the matter proceeded to full trial. During the pendency of the trial, the complainant in respect of count two (assault) withdrew her complaint. At the close of the trial, the applicant was acquitted of count three and then convicted of count one and four on 16th



November 2022. Subsequently, he was sentenced to a blanket three years imprisonment sentence without specifying the count in respect of which the sentence was meted out.

6. Vide a notice of motion filed on 1st December 2022, the applicant moved this court seeking revision of the sentence on grounds that; he is a first offender; he is remorseful; the sentence imposed was excessive and that he was the sole bread winner to his family.
7. During the hearing, the applicant pleaded for leniency while the state urged the court to impose the correct the sentence.
8. I have considered the application herein. The applicant was convicted of two counts and sentenced to serve a general sentence of 3years without specifying the count in respect of which the sentence was pronounced.
9. I have considered the application herein and response thereto. This court has been summoned to exercise its discretion to revise the impugned sentence. It is trite law that this court is empowered to exercise its supervisory powers under Article 165(6) and (7) of *the Constitution* to call for a subordinate court's record so as to make any directions or order to ensure fair administration of justice. Besides, under Section 362 and 364 of the *criminal procedure code*, the High Court is empowered to call upon and examine the record of criminal proceedings from a subordinate court so as to satisfy itself as to the correctness, legality, propriety on sentence passed or order made and on the regularity of the proceedings.
10. Courts have time and again held that sentencing is at the trial court's discretion and that an appellate court can only interfere if proved inter alia; that the trial court erred by applying wrong principles of the law or that the sentence was excessive. See the case *Bernard Kimani Gacheru vs Republic* (2002) eKLR.
11. Having considered the sentence pronounced, I am of the view that same is illegal and irregular as it does not specify the offence it is intended to serve. Pursuant to Section 364 as read with 354 of the CPC, this court has the power to pronounce the correct sentence. Taking into account the seriousness of the offence, mitigation on record, the fact that the applicant was a first offender and further having considered that he was in remand custody for 15 days, am inclined to substitute the general sentence of 3 years with the sentence of 3years imprisonment for count one and three months imprisonment for count four. Sentences to run concurrently starting from the day he was sentenced by the trial court. The deputy registrar to cause a fresh committal warrant drawn to reflect the said sentence.

Right of Appeal 14 days

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 23RD DAY OF JANUARY, 2023.

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J.N.ONYIEGO
JUDGE

