



**Miano v Republic (Criminal Revision E434 of 2022)
[2023] KEHC 1541 (KLR) (Crim) (27 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1541 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION E434 OF 2022
DR KAVEDZA, J
FEBRUARY 27, 2023**

BETWEEN

THOMAS MBUCII MIANO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged and convicted to 2 years' imprisonment for the offense of Assault causing actual bodily harm contrary to section 251 of the *Penal Code*. The applicant seeks a revision of his sentence to a non-custodial one.
2. Upon receipt of the request for revision of sentence, this court directed that a Sentence Review Report be filed on the convict for consideration by the court.
3. The Probation/Community Service Officer Berly Oyieno did file her report in court showing that the Applicant is aged 26 years old. He is currently serving his 2-year prison term at Nairobi Medium Prison and is recommended for a non-custodial sentence.

Analysis of Law

4. The powers of the High court in revision are contained in section 362 through to 366 of the *Criminal Procedure Code* (cap.75). Section 362 specifically provides 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”



5. The issue herein is whether the circumstances of the matter do justify a revision by a superior court from subordinate court. On this issue I draw guidance as elucidated in the case in the case of Republic v James Kiarie Mutungei [2017] eKLR where Nyakundi J held thus:

“The rationale of the High Court as a revisionary authority can be initiated by an aggrieved party, or suo moto made by the court itself, call for the record relating to the order passed or proceedings in order to satisfy itself as to the legality, or propriety, correctness of the order in question. The scope of revision therefore is more restrictive in comparison with the appellate jurisdiction which requires the high court to rehear the case and evaluate the evidence in totality by the lower court to come with a decision on the merits...”

6. The maximum sentence provided for the offence of assault causing actual body harm contrary to section 251 of the Penal Code is 5 years’ imprisonment. The sentence of 2 years imposed was within the law. It has not been demonstrated that the trial magistrate committed any illegality, impropriety or mistake in sentencing the applicant.

7. I am nonetheless alive to The Sentencing Policy Guidelines page 21 which provides: -

“Where the option of a non-custodial sentence is available, a custodial sentence should be reserved for a case in which the objectives of sentencing cannot be met through a non-custodial sentence. The court should bear in mind the high rates of recidivism associated with imprisonment and seek to impose a sentence which is geared towards steering the offender from crime. In particular, imprisonment of petty offenders should be avoided as the rehabilitative objective of sentencing is rarely met when offenders serve short sentences in custody. Further, short sentences are disruptive and contribute to re-offending.”

8. I also take into consideration the mitigation of the applicant that he pleaded guilty to the offense, was remorseful and with no previous records. He also showed willingness to rehabilitate as he regrets the actions that led him to prison and was willing to ask for pardon from the victim.

9. I find this application merited and hereby allow it. I note that the applicant has already served over a year’s imprisonment.

10. The 2 years’ imprisonment sentence imposed on 04/02/2022 by the trial court is hereby quashed. The applicant is hereby referred to a non-custodial sentence and shall serve supervised and unpaid community service in Huruma Police Station for the remaining period of the sentence, having been declared suitable.

11. It is hereby so ordered.

RULING READ, DELIVERED AND SIGNED THIS 27TH DAY OF FEBRUARY 2023.

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D. KAVEDZA

JUDGE

In the presence of:

