



**Emile v Director of Public Prosecutions (Criminal Revision  
117 of 2020) [2023] KEHC 2810 (KLR) (24 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2810 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL REVISION 117 OF 2020  
WM MUSYOKA, J  
MARCH 24, 2023**

**BETWEEN**

**GODWIN EMILE ..... APPLICANT**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... RESPONDENT**

*(Revision arising from sentence imposed on the applicant on 4th  
May 2020, in Kakamega Criminal Case No. 741 of 2019, Republic  
vs. Godwin Emile, by Hon. D. Alego, Senior Principal Magistrate)*

**RULING**

1. In my ruling of July 8, 2022, I noted that the applicant had not lodged appeal, and I said that his sentence could only be looked at from the point of view of revision. Revision, under section 362 of the [Criminal Procedure Code](#), Cap 75, Laws of Kenya, considers the legality, propriety, correctness and regularity of the order.
2. The trial court records have been availed. The applicant faced a charge of causing grievous harm. The P3 form classified the injuries as maim. In mitigation, the applicant prayed for leniency, saying that he was a first offender and a sole breadwinner for his family. Victim assessment indicated that the complainant had permanent injuries, and was incapacitated, and could not work. The trial court imposed sentence of ten years. The maximum penalty for causing grievous harm is life in prison.
3. Revision and appeal are different processes. On appeal, the appellate court may intervene and reduce or vary sentence. In revision, the court only considers whether the sentence was regular, or legal, or proper, or correct, which would mean that the options available to the court are limited.
4. The applicant was convicted after a full trial. He has not raised any issues on the trial process. He asks for revision of sentence, and submits around remorsefulness, his constitutional rights to review, and section 333(2) of the [Criminal Procedure Code](#). He mitigated and expressed his remorse before the



trial court, and that must have been considered in determining the sentence of 10 years. On his right to review, he has exercised that by the instant application, but consideration of the review should be within the parameters that are set out in the law, which I have set out above.

5. The only respite the applicant could have is with respect to exercise of discretion under section 333(2) of the *Criminal Procedure Code*. The provision states that the time spent in custody should be considered. The trial court did not specify that. Should it be the case that the sentence he is serving does not include the time spent in custody, that would amount to an irregularity or incorrectness. I shall accordingly revise the sentence order, so as to include a statement that his sentence of 10 years shall include the time that he spent in custody, that is to say the period running from the date of his arrest up to pronouncement of sentence on May 4, 2020.
6. The sentence herein is revised to that very limited extent. It is so ordered and directed.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 24<sup>th</sup> DAY OF March 2023**

**W MUSYOKA**

**JUDGE**

**Mr. Erick Zalo, Court Assistant.**

Ms. Kagai, instructed by the Director of Public Prosecutions, for the Republic.

Godwin Emile, the applicant, in person.

