



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT VOI

CRIMINAL REVISION CASE NO. E168 OF 2021

FREDRICK SEMBUA HAMIRI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. The Applicant Fredrick Sembua Hamiri was connected in Taveta Magistrates Court CR. Case No. 265 of 2016 with the offence of assault causing bodily harm contrary to Section 251 of the penal code in 2 counts and he was sentenced to serve 2 years jail term in each count to run consecutively.

2. The Applicant was aggrieved by the sentence by the trial Magistrate and he wrote a letter through his advocates dated 9th November 2021 seeking that the lower court records be called for so that this court is satisfied to the correctness, legality and propriety of the sentencing of Applicant to custody without a fine.

3. The application was based on the grounds that:-

i. The learned Magistrate failed to address himself to Section 216 of the Criminal Procedure Code and paragraphs 7.18 & 22.12 of the Judiciary sentencing Policy Guidelines whilst making the said sentencing.

ii. That the Learned Magistrate failed to address himself to the exceptional circumstances surrounding the Applicants case whilst making the said sentencing.

iii. The learned Magistrate failed to judiciously weigh the mitigation of the Applicant which was well explained, extremely reasonable and satisfactory to the court as such formed a basis for non-custodial sentence.

iv. The learned Magistrate failed to consider that the Applicant is a 1st offender who is very remorseful.

v. The sentence by the learned Magistrate was excessively harsh and most punitive in the circumstances of the case.

4. The Applicant sought leave of the court to be heard under sections 365 of Criminal Procedure Code as read with Articles 165 of the constitution of Kenya 2010.

5. Applicant said he was remorseful and requested for forgiveness promising not to repeat not commit any other offence. He claimed to have already facilitated reconciliation with the complainant who is his immediate neighbour. He said that non-custodial sentence will facilitate the reconciliation as encouraged by Article 159 of the constitution. That the Applicant is ready to abide by all the terms given in a non-custodial sentence. That he begs for leniency so that he can take care of his child.

6. The Application for revision was canvassed by way of oral submissions the Applicant relying on the holdings in:-

i. Peter Mangeria vs Republic [1983] eKLR;

ii. Peter Mbugua Kaburu vs Republic [2016] eKLR;

iii. Barnaba Ondiek vs Republic [1976] eKLR.

7. Having given due consideration to application and the oral submissions, I do find that application has been conceded to the extent that sentence should have been ordered to run concurrently and/or that an alternative of fine should have been provided for.

8. The sentence is therefore revised in the following terms:-

- i. Applicant fined to pay Kshs.50,000/= in each count in default to serve 12 months jail term in each count.
- ii. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 13TH DAY OF JANUARY, 2022 BY EMAIL.

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of:

Court assistant: Ogwel

Mr. Bwire Advocate for Applicant – No appearance

Ms. Kambaga hold brief for Simbi for state.

Hon. Lady Justice A. Ong'injo

Judge