



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Karanja v Republic (Criminal Revision E138 of 2022)
[2022] KEHC 14734 (KLR) (26 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14734 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL REVISION E138 OF 2022
GL NZIOKA, J
OCTOBER 26, 2022**

BETWEEN

JOHN KIMANI KARANJA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged before the Senior Principal Magistrate’s Court at Engineer *vide* Criminal Case No E2361 of 2021, with the offence of; assault causing actual bodily harm contrary to; section 251 of the *Penal Code*. The particulars of the charge are as per the charge sheet.
2. He pleaded guilty and was convicted on his own plea of guilty. He was then sentenced to four (4) years imprisonment. However, he seeks for sentence review based on the notice of motion application filed in court on, September 14, 2022 in which he prays that, the custodial sentence herein, be reduced or converted to a non-custodial sentence.
3. He relies on an affidavit he has sworn and a document entitled: “memorandum of sentence review” in which he states as follows:
 - a. That, I am a first offender.
 - b. That, I pray that this honourable court allow me to spend the remaining period of my sentence under community service order (CSO) or set me at liberty.
 - c. That, I am remorseful of my offence and I have learnt to be a law-abiding citizen.
 - d. That, I am from a poor family background.
 - e. That, I did not give proper mitigation during my sentencing and hence would like to present during the hearing and determination of this application.



- f. That, I am the sole breadwinner of my family and my incarceration has placed them in a very difficult situation.
 - g. That, I humbly beg this honourable court for leniency and reduce my four (4) year sentence.
 - h. That, I am not appealing against sentence and conviction but applying for a review of sentence.
4. The court ordered the application be served for response and gave directions and timelines on the filing of, a response and/or submissions and further directed that, a pre-sentence report be filed by the probation officer. However, no response, submissions nor the pre-sentence report were filed.
5. Be that as it may, the provisions of, sections 362 of the [Criminal Procedure Code](#) gives the court revisionary power and states 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.”
6. Further the provisions of; section 364 of the [Criminal Procedure Code](#) states as follow: -
- (1) “In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may—
 - (a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;
 - (b) in the case of any other order other than an order of acquittal, alter or reverse the order.
 - (2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence: Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.
 - (3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.
 - (4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.
 - (5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.”
7. It is clear from the above provisions that, the court will only exercise its revisionary powers where, the impugned sentence is either incorrect, illegal or improper. The objective of revisionary jurisdiction is to set right a patent defect or error of jurisdiction or law. This jurisdiction will only be involved where the decision under challenge is; grossly onerous, there is no compliance with the provisions of the law, or the finding re-ordered are based on no evidence, or material evidence is ignored or judicial discretion is exercised arbitrarily or perversely.



8. Further, in exercise of revision powers, it is not the responsibility of the High Court to take into account the benefit of the evidence, it merely has to see if the provisions of the law have been properly adhered to by the court whose order is the subject of the revision, as held in; *Major SS Khanna vs Brig FJ Dillon* 1964 AIR 497, 1964 SCR (4) 409).
9. It is also noteworthy therefore that, the revision jurisdiction does not allow the court to interfere and correct errors of facts, or of law when the order is within the jurisdiction of the subordinate court; even if the order is right or wrong, or in accordance with the law, unless it exercised its jurisdiction illegally or with material irregularity. Reference is made to the cases of; *Wesley Kiptui Rutto & Another vs Republic [2017] eKLR*, *Republic vs Everlyne Wamuyu Ngumo (2016) eKLR*, *Public Prosecutors vs Muhavi Bi Mond Jani & Another* 1996 4 LRC 728, 743-5, *DPP vs Samuel Kimuche*.
10. In the instant matter applicant was charged and convicted of an offence under under section 251 of the *Penal Code*, which states as follows:-

“Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour and is liable to imprisonment for five years.”
11. The sentence meted in the present case is imprisonment four (4) years and was therefore within the limits provided for by the law and was therefore not illegal, incorrect or improper. However, it accounts for over 75% of the sentence provided under the law.
12. It is noteworthy that, the applicant pleaded guilty and saved court’s time. The P3 Form indicates that, the victim suffered injuries on the head and neck, which is indicated, as mild tenderness with parietals and occipital regions. There is no indication of hospitalization of the victim.
13. In the given circumstances, I find this is a suitable case for revision on the ground that, the sentence is rather harsh in the given circumstances and therefore, set aside the sentence herein of four (4) years and substitute it with a custodial sentence of; two and half years and be subject to sign a personal bond 100, 000. to keep peace for a period of one year thereafter.
14. It is so ordered

DATED, DELIVERED AND SIGNED ON THIS 26TH OCTOBER, 2022

GRACE. L NZIOKA

JUDGE

In the presence of;-

Applicant in person

Ms Maingi for the respondent

Ms Ogutu: court assistant

