



REPUBLIC OF KENYA



KENYA LAW
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**Okwera v State (Criminal Revision 28 of 2020)
[2021] KEHC 9778 (KLR) (12 February 2021) (Ruling)**

Neutral citation: [2021] KEHC 9778 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL REVISION 28 OF 2020
JN ONYIEGO, J
FEBRUARY 12, 2021**

BETWEEN

BENARD ORIENDO OKWERA APPLICANT

AND

STATE RESPONDENT

RULING

1. The appellant was on August 19, 2019 charged before Taveta Law Court's Principal Magistrate's Court of two counts. Count one, he was charged with assault causing actual bodily harm in that he assaulted Otieno Hasibo thereby occasioning him actual bodily harm. Count 2, he was charged with malicious damage to property contrary to section 339 (1) of the penal code in that he destroyed Otieno's radio valued at 1,500/=
2. Having entered a plea of guilty, he was on 14.10.19 sentenced to 5 years imprisonment in respect of count 1 and 3 years imprisonment in respect of count 2. Sentences are to run concurrently. While imposing this sentence, the court considered the mitigation on record to the effect that; accused is a first offender, the complainant is a father to the appellant who is aged 76 years, the probation report is not suitable and that he was not remorseful.
3. Dissatisfied with the sentence, the appellant moved to this court by way of a letter dated 17.8.20 seeking revision of his sentence. He pleaded for leniency while alleging that the sentence is harsh and excessive.
4. When the matter came for hearing, the court ordered for pre-sentence report. From the victim's impact report dated 10.2.2021 prepared by Kipsang a Probation Officer the victim and the appellant's family members expressed their desire that the appellant should serve his sentence in full.
5. During the hearing, the appellant reiterated his grounds for review of sentence stating that he has reformed and regrets his mistake. The state through Mr. Kipchirchir opposed the application stating that the appellant/applicant should serve his sentence in full.



6. I have considered the application herein, sentence imposed visavis the seriousness of the offence committed. I have also considered the victim impact report which is not suitable.
7. There is no doubt the objective of punishment is deterrence, retribution, rehabilitation, denouncing of the offence on behalf of the community, incapacitating the offender or restorative justice. The appellant did attack his 76 old father thus injuring his eye seriously. The father is still bitter. Indeed, punishment must be proportionate with the nature of the offence.
8. In this case the court gave the maximum sentence of 5 years in respect of count I. I find this to be harsh and excessive considering that the appellant is a first offender. Further, considering that prisons are congested due to covid-19, I will substitute the sentence with an imprisonment term of 3 years to be calculated from the date he was sentenced for count I. As regards count 2, the same is not reasonable considering the value of the destroyed property. I will therefore reduce and substitute it with one year imprisonment.
9. Accordingly, the sentence of;
 - a. five years for count one is substituted with a sentence of three years.
 - b. three years for count two is substituted with a sentence of one year.
 - c. sentences to run concurrently and the same to be calculated from the date of sentence.

Right of Appeal of 14 days.

DATED SIGNED DELIVERED IN OPEN COURT THIS 12TH DAY OF FEBRUARY 2021

J. N. ONYIEGO

JUDGE

