



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**CRIMINAL REVISION E023 OF 2021**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**LOGIA LOIDEPE.....ACCUSED**

**RULING ON REVISION**

1. The Applicant pleaded guilty and was convicted and sentenced to serve imprisonment for (4) years for the offence of Assault causing actual bodily harm under section 251 of the Penal Code.
2. Revision is sought on grounds principally that the complainant is the accused's wife with whom the applicant has reconciled with through village elders, and that the applicant has a young family of 5 Children and a house wife for whom he is the sole provider and further that he supports his ailing elderly mother.
3. The DPP has opposed the revision and by submissions dated 15<sup>th</sup> September, 2021 urged the seriousness of the injuries of the complainant and the possibility of greater harm or even death being visited upon the complainant if applicant is released from custody.
4. The court has considered the evidence and the submissions placed before this court through the applicant's Notice of Motion dated 31<sup>st</sup> May, 2021 herein and the DPP's Submissions dated 15<sup>th</sup> September, 2021.
5. The Court has observed from the record that the plea of not guilty was unequivocal and taken in scrupulous regard of the procedure under section 207 of the Criminal Procedure Code and in accordance with the procedure set out in *Adan V. R (1973) EA 445*. The applicant was properly convicted on his own Plea of guilty. See *John Muendo Musau V. R (2013) eKLR* and *Kevevo V. R (2015) eKLR*.
6. On the evidence, the events of the offence of assault causing actual bodily harm under section 251 of the Penal Code were established. The applicant cut his complainant wife with a knife on "her hands, legs and on her head."
7. By Section 348 the Criminal Procedure Code, the applicant properly only sought the reversal of his sentence as no appeal is allowed for accused who has pleaded guilty and convicted on that plea, save as to extent or legality of the sentence.
8. In exercising this discretion as to the sentence, the Trial Magistrate considered the prevalence of the offence and that in the particular case it was not the first time that the accused had inflicted serious injury to the complainant. The sentence of imprisonment for 4 years was within the penalty prescribed of imprisonment for 5 years for the offence under section 251 of the Penal Code.
9. On the attempt to withdraw the charges, the DPP who is the custodian of the prosecutorial powers of the State under Article 157(6) of the Constitution objected on account of the aggravated nature of the injuries, as well as the history of the two - applicant and his wife. At the time, the accused himself agreed that –

*"I and my wife were drunk and no one knows how things happen. Even when I injure her, I am the one who attends to her. This knife both of us use it. We love each other but it is alcohol that makes us fight."*

It appears to be a clear case of a battered wife in drink-driven assaults.

10. Although the court is required under section 176 of the CPC to promote reconciliation and settlement of cases of common assault and offences of personal nature, the offence should not be aggravated and repeated to the extent that the life and limb of the complainant is exposed to further injury. The circumstances of this case require a deterrent sentence and, on the principle of *Wanjema V. R (1973) EA 493*,

I do not find any reason for interfering with the sentencing decision of the trial court. The Revision is declined.

**DATED AND DELIVERED ON THIS 30<sup>TH</sup> DAY OF SEPTEMBER, 2021.**

**EDWARD M. MURIITHI**

**JUDGE**

**Appearances**

Applicant in person

Ms. Nandwa, Prosecution counsel for DPP