



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**CRIMINAL REVISION NO. E054 OF 2021**

**(arising from the conviction and sentence in Mumias PMCCRC No. 244 of 2020, by Hon. W Cheruiyot, Senior Resident Magistrate (SRM), on 7<sup>th</sup> December 2021)**

**PRISCA WANGA AMUKWACHI.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

1. These proceedings were sparked off by the conviction of Prisca Wanga Amukwachi, who I shall refer to hereafter as the applicant, of assault causing actual bodily harm, contrary to section 251 of the Penal Code, Cap 63, Laws of Kenya, and sentenced to three months' imprisonment.
2. The applicant was aggrieved by the sentence imposed, and brought the Motion, herein, dated 17<sup>th</sup> December 2021, seeking revision of sentence under sections 362, 364 and 365 of the Criminal Procedure Code, Cap 75, Laws of Kenya. She complained that the court imposed a custodial sentence without the option of a fine. She points out that she has a two-year old child, was a first offender, among others.
3. The original records of the trial court have been availed, and I have perused through them. I have noted that the trial court did call for a pre-sentence report, which was not favourable to the applicant, and took into account the sentiments expressed in that report.
4. Sentencing is at the discretion of the court, taking into account all the antecedents that are brought to its attention, the prosecution, the accused person and by social workers upon social enquiry.
5. After going through the trial record, I did not find anything particularly irregular or improper about the way the trial court handled the sentencing hearing of the applicant, and exercised its discretion on the matter. The factors that were taken into account were that the applicant was not remorseful. He did not express any remorse at mitigation, nor when she met the social worker for evaluation for the purposes of the pre-sentence report. Even in the application before me, she expresses no remorse whatsoever. Imprisonment is always the best option in such cases.
6. My inclination is not to interfere at all with the decision of the trial court. However, I note that the prosecution had no records of previous convictions by the applicant, and she can therefore have the benefit of treatment as first offender. I note to that she appears to have a young family, and is said to be nursing a two-year old. These should tell in her favour.
7. I shall accordingly revise the sentence imposed by the trial court, and substitute it with a fine of Kshs. 20, 000.00, and default to serve three months' imprisonment.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 20<sup>th</sup> DAY OF DECEMBER 2021**

**W MUSYOKA**

**JUDGE**