



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL REVISION NO. 389 OF 2020

FRANCIS NTURIBI ANAMPIU.....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

JUDGMENT

1. The applicant, **Francis Ntubiri Anampiu**, was charged before the Principal Magistrate's Court at Tigania with the offence of injuring an animal contrary to **Section 338 of the Penal Code**.

2. It was alleged that on the 6th day of June 2019 at Kalimba village, Kaliati sub-location, Miathene location in Tigania West sub-county, within Meru County, willfully and unlawfully wounded one cow valued at Kenya Shillings 40,000/-, the property of PURITY MWENDWA.

3. The applicant was convicted and sentenced to a fine of Kshs. 100,000/- in default to serve two (2) years imprisonment.

4. Vide his letter dated 2/06/2020 the applicant is requesting review of his sentence since he is now sick and his health is deteriorating so much. There is G K Prison dispensary note dated 08/01/2020. He is also remorseful and learnt his lesson the hard way and has reformed and seeks pardon.

5. **Section 364 of the Criminal Procedure Act** stipulates the powers of the High Court on revision as follows:

“(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.”

Also, **The Sentencing Policy Guidelines** page 21 as referred to in **John Kariuki Maringa v Republic [2019] eKLR** states: -

“Where the option of a non-custodial sentence is available, a custodial sentence should be reserved for a case in which the objectives of sentencing cannot be met through a non-custodial sentence. The court should bear in mind the high rates of recidivism associated with imprisonment and seek to impose a sentence which is geared towards steering the offender from crime. In particular, imprisonment of petty offenders should be avoided as the rehabilitative objective of sentencing is rarely met when offenders serve short sentences in custody. Further, short sentences are disruptive and contribute to re-offending.”

6. When a court metes out any form of sentence in criminal cases, it should always strive to achieve some noble objective. Amongst these objectives is rehabilitation of offenders. Such punishments as non-custodial sentences serve that purposes. I am acutely aware that in this case, a non-custodial sentence is available, and it will answer to the rehabilitation of the offender herein. No useful purpose will be served by incarcerating having the applicant. In fact, he had been given an option of fine. He is also remorseful and I shall impose a sentence which is geared towards steering him from crime. Short sentences are better served under probation which has a safety net of keeping the offender from crime. He is also ill and during this period of COVID-19 a much more appropriate sentence is desirable.

7. Based on the foregoing, the circumstances of the case and the condition of the applicant, I am persuaded that the fine of Kshs. 100,000/- in default to serve two (2) years imprisonment is not appropriate. I hereby set aside the sentence and in lieu thereof place him under probation for six months. The in charge, probation office, Meru to carry out the order.

Dated, signed and delivered at Meru this 29th day of July, 2020

F. GIKONYO

JUDGE