

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HCCR REV. NO. 170 OF 2020

DOMINIC KIVUVA MUAMBI.....CONVICT

VERSUS

REPUBLIC RESPONDENT

RULING

1. This matter has been placed before me through a Notice of Motion dated 26th August 2020 in respect of the sentence pronounced in **Makueni Principal Magistrate's Criminal Case No. 78 of 2015 – Republic –Vs- Dominic Kivuva Muambi**. It was placed before me under Section 362 and 364 of the Criminal Procedure Code (Cap 75).
2. I am told in court by Ms. Kiprono for the convict that her client entered his own plea of guilty to a charge of assault causing actual bodily harm, and was sentenced to serve two (2) years imprisonment without the option of a fine, and the sentence is to commence running after the completion of prison sentence in **Embu PM Criminal case 542 of 2014**, thus the sentence herein will commence running early next year (2021).
3. The Prosecuting Counsel Mr. Kihara on his part has informed me that he has no objection for review of sentence as the option of a fine is available for the offence and the convict pleaded guilty to the charge and was remorseful and had asked for leniency.
4. I have perused the trial court file. The convict was charged with assault causing actual bodily harm contrary to Section 251 of the Penal Code, to which he pleaded guilty. The maximum sentence provided under the law is five (5) years imprisonment.
5. I also note that in mitigation the convict stated that the Complainant was his sister who had abused him. The medical report that is the P3 form, showed that the Complainant suffered a fracture of the left thumb.
6. Though in my view, the sentence of two (2) years imprisonment is not excessive, I am being requested to consider the circumstance of the case and imposition of the option of a fine which the trial court did not grant to the convict. Though Ms. Kiprono has talked about skills the convict has learnt in Kamiti Prison, in my view the provisions under Section 362 and 364 of the Criminal Procedure Code do not confer on this court under revision jurisdiction to consider other factors beyond what transpired in the trial court, or what could have been considered by the trial court in the subject proceedings.
7. Taking all factors into account herein, in my view, though the sentence prescribed for assault causing actual bodily harm does not include a statutory option of a fine, there is no bar to a trial court considering that option in appropriate circumstances. The State does not object to the imposition of an option of a fine herein, and in my view this is a case where the Magistrate should have considered the option of a fine, as the crime arose in a domestic matter and the convict pleaded guilty and asked for leniency thus the Magistrate was in error when he did not give the convict that option of a fine.
8. In the circumstances therefore, I review the sentence of the trial court and order that the convict is now sentenced **to pay a fine of Kshs. 5,000/= and in default to serve the two (2) years imprisonment imposed by the trial court.**

Delivered, Signed & dated this 15th day of December 2020, in open court at Makueni.

.....

HON. G. DULU

JUDGE

IN THE PRESENCE OF:-

Mr. Mwiwa – Court assistant.

Mr. Muthiani holding brief for Mr. Kiprono for Applicant.

Mr. Muriuki for DPP.