



**REPUBLIC OF KENYA**

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

**CRIMINAL REVISION NO.141 OF 2018**

**MUTEMBEI JEDIEL NDWIGA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

***(From original conviction and sentence in Criminal Case No. 757 of 2012 of the Principal Magistrate's Court at Chuka).***

**R U L I N G**

1. Mutembei Jediel Ndwiga, the applicant herein was charged and convicted together with two others for the offence of grievous harm contrary to **Section 234** of the **Penal Code** vide Chuka **Principal Magistrate's Court Criminal Case No.757/2012.**

The particulars of the offence were that on 3<sup>rd</sup> July 2012 at Kamara Chogoria Location within Tharaka Nithi County, the applicant jointly with others unlawfully cause grievous harm to Moses Kinegeni. The applicant herein and his two Co-accused upon conviction were sentenced to serve 5 years imprisonment each on 12<sup>th</sup> October 2015.

2. The applicant has now moved this court under **Sections 362 and 364** of the **Criminal Procedure Code** for review of his sentence on the following grounds:-

***(i) That he was a first offender.***

***(ii) That he is a breadwinner in his family,***

***(iii) That he is remorseful and should be forgiven***

***(iv) That he is now rehabilitated***

***(v) That his sentence should be reduced to a non custodial one.***

3. The applicant has sworn an affidavit to support the above grounds.

4. This court did call for the lower court file pursuant to the provisions of **Section 362** of the **Criminal Procedure Code** upon perusal of the record and the judgment this court is satisfied with the correctness, legality and propriety of the proceedings and the judgment delivered by the trial court.

5. The victim/complainant suffered serious injuries including a closed fracture of the right tibia and fibula. The sentence provided under **Section 234** of the **Penal Code** is a maximum of life imprisonment. The trial court exercised its discretion under **Section 26(2)** of the **Penal Code** and handed out 5 years each to the applicant and his Co-accused. This court can only intervene if it is established that the trial court took into consideration an irrelevant factor or omitted a relevant one in the exercise of discretion. The applicant has not attacked the trial court's exercise of that discretion perhaps for good reason. The trial court was actually lenient to the applicant and his Co-accused because 5 years imprisonment in my view of the offence committed is lenient and the applicant could not have asked for more because at the end of the day he and his partners in crime need time to reflect on the crime they committed and reform. They should not have taken the law into their hands and cause serious/grievous injuries to their neighbour regardless of the differences they might have had. Had the State asked for enhancement, I would enhance the sentence.

In the premises this court finds no merit in this application dated 7<sup>th</sup> August, 2018. The same is disallowed. The applicant is advised to be of good behaviour and continue with his rehabilitation and transformation in the correctional facility he is kept.

**Dated, signed and delivered at Chuka this 23<sup>rd</sup> day of January, 2019.**

**R.K. LIMO**

**JUDGE**

**22/1/2019**

Ruling signed, dated and delivered in the open court in presence of applicant in person and Momanyi for Director of Public Prosecution/Respondent.

**R.K. LIMO**

**JUDGE**

**23/1/2019**