



**REPUBLIC OF KENYA**

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

**CRIMINAL REVISION NO.142 OF 2018**

**KELVIN MUTWIRI MUTEGLI.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Intended Appeal from Conviction and sentence of the CM'S Court in Criminal Case No. 88 of 2017 at Chuka delivered by HON. N. KAHARA (RM) on 22/8/2018).*

**R U L I N G**

1. **KELVIN MUTWIRI MUTEGLI** the applicant herein was charged together with two other persons with 4 counts of assault causing actual bodily harm contrary to **Section 251** of the **Penal Code**. The particulars in summary are that on 7<sup>th</sup> January 2017 the applicant and the two other persons assaulted FMN, RG, MMM and MM all in Mugure Location. They also faced alternative charges of subjecting a child to cultural rites and traditional practices that are likely to affect the child's life, health and dignity contrary to **Section 14** as read with **Section 20** of the **Children's Act**.
2. The Applicant and his co-accused denied committing the offence and the prosecution presented six witnesses to prove their case. The trial court upon putting the applicant and his co-accused on their defence found them guilty and convicted them sentencing each to serve two years imprisonment for each of the four counts. The sentences were ordered to run concurrently.
3. The applicant has now moved this court through an application dated 20<sup>th</sup> September, 2018 asking this court to review his sentence requesting that his sentences be reduced to non custodial ones. He avers that his education at Meru Technical Training College would be adversely affected by the sentence handed out against him. He also states that he was providing for her aged grandmother who would be left vulnerable if he continues serving custodial sentence.
4. This court has called the lower court file in accordance with the provisions of **Sections 362** of the **Criminal Procedure Code** and I have perused through the proceedings thereof in order to satisfy myself on the correctness, legality or propriety of finding sentence passed against the applicant because he is not challenging his conviction. This court notes that the applicant was found guilty and convicted of the main charge of assault and the sentence prescribed under **Section 251** of the Penal Code is imprisonment of upto 5 years. The learned trial Magistrate noted that due to prevalence of the attacks on children especially under the guise of traditional rites like circumcision in the area, a deterrent sentence was called for. This court takes Judicial notice of that fact and finds that the trial court exercised her discretion under **Section 26** of the **Penal Code** well. I find no basis to interfere with the discretion correctly given that the trial magistrate took into consideration all the relevant factors and mitigation offered.

In the premises this court having found no impropriety or irregularity in the lower court proceedings and the sentence, the application dated 20<sup>th</sup> September 2018 is disallowed. The sentence meted out against the applicant is upheld.

**Dated, signed and delivered at Chuka this 22<sup>nd</sup> day of January, 2019.**

**R.K. LIMO**

**JUDGE**

**22/1/2019**

Ruling signed, dated and delivered in open court in presence of applicant in person and Momanyi for state.

**R.K. LIMO**

**JUDGE**

**22/1/2019**