



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

CRIMINAL REVISION NO. 127 OF 2018

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

ARNOLD MUGAMBI NKONGE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. **ARNOLD MUGAMBI NKONGE**, the applicant herein has moved this court under **Sections 362 & 364** of the **Criminal Procedure Code** through an application dated 25th June 2018 for review of his sentence passed against vide **Chuka Principal Magistrate's Court Criminal Case No. 757 of 2012.**

2. The grounds upon which revision of sentence is sought are listed as follows namely:-

- (i) That he was convicted for the offence of grievous harm contrary to **Section 234** of the **Penal Code** and sentenced to serve 5 years imprisonment.
- (ii) That he is a first offender.
- (iii) That he is the only bread winner of his old parents.
- (iv) That he is now remorseful and begging for forgiveness.
- (v) That he has fully rehabilitated and will never repeat a crime again.
- (vi) That he is asking for non-custodial sentence.
- (vii) That he is ready to abide by all the terms given in a non- custodial sentence.
- (viii) That he has not been able to get any remission in his sentence since the government stopped the program in 2015.
- (ix) That it would be fair if he would pay a fine of Kshs.5000/- in lieu of the term remaining in his sentence.
- (x) That he has underwent training while in prison and acquired skills in carpentry and joinery.
- (xi) That he begs for leniency so that he can support his poor family.

3. This application is supported by the affidavit of the applicant sworn on 28th June, 2018 where he has reiterated the above grounds.

4. The Respondent opposed this application citing that the sentence passed against the applicant was lenient enough considering that the law provides for life sentence for the offence. It is contended that the applicant's sentence should infact be enhanced in order to pass a clear message to the people of Tharaka Nithi that you cannot maim someone or cause grievous harm and get away with a light sentence.

5. The court did call for the lower court file **Chuka Principal Magistrate Criminal Case No.757/12** pursuant to the provisions of **Section 362** of the **Criminal Procedure Code**.

I have perused through the file and noted from the proceedings and sentence that the applicant has raised no ground and indeed no basis exists to challenge the regularity, correctness, legality or propriety of the proceedings including the judgment and sentence. This court has noted that the applicant in the company of 2 other co-accused persons namely; Charles Kimathi Nkonge and Mutembei Jediel Ntwiga caused grievous harm to the complainant (PW1) which included closed fracture of right tibia and fibula as per the P3 form tendered as P. Exhibit 1. The injuries caused were serious enough to be classified by the medical officer P.C.E.A Chogoria Hospital as "***grievous harm***"

6. The offence committed against the complainant by the applicant and the 2 other co-accused persons attracts a penalty of life imprisonment as provided under **Section 234** of the **Penal Code**. A jail term of 5 years as contended by the prosecution was therefore in all fairness lenient given the nature of injuries caused. The trial court must have considered mitigating circumstances obtaining in passing the sentence. The applicant has asked for leniency but the trial court was more than lenient to him. He also says that he has rehabilitated and acquired useful life skills which is a good step in the reformation process and a good feedback about our current penal institution (prisons). However that is not good ground to review a sentence passed in a serious offence such as the one for which the applicant was convicted.

In the premises, this court finds no merit in the application dated 25th June, 2018 the same is disallowed. The applicant is advised to continue with his rehabilitation program and further training in order to get a complete and sufficient transformation so that once he has served his sentence, he can be useful to his family and the community at large. The sentence is upheld for the aforesaid reasons.

Dated, signed and delivered at Chuka this 18th day of October, 2018.

R.K. LIMO

JUDGE

18/10/2018

Ruling dated, signed and delivered in open court in the presence of Applicant in person and Machirah for state.

R.K. LIMO

JUDGE

18/10/2018