



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MALINDI**

**CRIMINAL REVISION NO. 32 OF 2017**

**KENGA NGALA MWAGANDI.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

(From the Original Conviction and Sentence in the Criminal Case No. 118 of the 2015 of the Senior Principal Magistrate's Court at Kilifi – L.N. Juma, RM)

**JUDGEMENT**

1. The Applicant, Kenga Ngala Mwangandi wrote to this Court on 3<sup>rd</sup> July, 2017 seeking a revision of his sentence. He was convicted on 8<sup>th</sup> May, 2017 for assault causing actual bodily harm contrary to Section 251 of the Penal Code and sentenced to serve one year imprisonment.
2. It is the Applicant's assertion that despite his mitigation that he had six children and was remorseful the trial Magistrate had nevertheless went ahead and sentenced him to one year imprisonment without the option of a fine. He is therefore asking this Court to exercise its powers and forgive him. He pledges not to commit any other offence in future.
3. Mr. Fedha for the State told the Court that the Applicant's conviction was safe. He, however, left the issue of the sentence to the Court's discretion.
4. The revisionary power of this Court in criminal matters is found in Section 362 of the Criminal Procedure Code, Cap. 75. In the case of a conviction the Court can exercise the powers conferred on it as if it is sitting on appeal.
5. The record before me shows that the Applicant was a first offender. He gave a strong mitigation. The injury to the complainant was classified as harm. Prison should be reserved for those who have committed heinous crimes and repeat offenders. The Applicant did not fall into these categories. His application has merit.
6. At the time of the delivery of this ruling the Applicant will have served close to five months in prison. That is sufficient punishment and he will have learned his lesson in the process. His application is allowed and the sentence of one year imprisonment is set aside and substituted with a sentence of imprisonment for the period already served. He is thus set at liberty unless otherwise lawfully held.

**Dated, signed and delivered at Malindi this 28<sup>th</sup> day of September, 2017.**

**W. KORIR,**

**JUDGE OF THE HIGH COURT**