



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**CRIMINAL REVISION NO. 93 OF 2017**

DENNIS KKINYUA NJUE.....APPLICANT

*VERSUS*

DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

**R U L I N G**

1. I have perused this file brought to me for revision under Sections 362 and 364 of the Criminal Procedure Code. The applicant was charged with three counts and convicted as follows:-

Count I - Threatening to kill contrary to Section 223 of the Penal Code where he was sentenced to serve six (6) years imprisonment.

Count II - Threatening to kill contrary to Section 223 of the Penal Code and was sentenced to serve six (6) years imprisonment.

Count III - Assault causing actual bodily harm contrary to Section 251 of the Penal Code and was sentenced to serve two (2) years imprisonment.

3. The applicant lists several grounds in his application for review of sentence:-

(1) That he was a first offender.

(2) That having served about 1/3 of the sentence, he contends that he is fully reformed.

(3) That the complainant in the criminal case was his father which fact was not considered by the court.

(4) That the applicant was totally drunk at the time of the incident which factor was ignored by the court in sentencing him.

(5) That he is the sole breadwinner of the family of a wife and a child.

4. The record shows that the applicant pleaded guilty to the charge and his case was dealt with and finalized the same day. He does not challenge the conviction but his prayer is for review of sentence downwards. This plea calls consideration of the sentence provided for by the law and for the mitigation of the applicant.

5. In mitigation the applicant told the court:-

*I pray for forgiveness. The offence arose out of a land dispute. I was also drunk at the time. We have had such domestic disputes before.*

6. Firstly, I note that the accused was a first offender. He pleaded for forgiveness and pointed out that he and his father had a long-standing land dispute. This was denied by the complainant who seems to have been called upon by the court to comment on the mitigation. It was not procedural though to call the complainant after the accused had given his mitigation. Be as it may, it is not in dispute that the parties had some disagreements even before the incident. This was confirmed in the address of both parties to the court.

7. Section 223 provides for a maximum sentence of ten (10) years imprisonment while assault causing actual bodily harm provides for five (5) years imprisonment. I find that the sentences of six and two years imprisonment respectively were within the law.

8. However, the court ought to have considered that the applicant was a first offender and was closely related to the complainant. Further, the applicant pleaded guilty to the charge and saved the court from a rigorous trial. It is my considered opinion that if these factors were considered in sentencing, the court would have either considered a probation sentence with a view of giving the applicant the chance to reform outside the confines of prison.

9. The court ought to have alternatively considered giving a lesser imprisonment sentence especially in counts I and II. The sentence of six (6) years imprisonment was on the higher side considering that the applicant was a first offender and a family member of the complainant.

10. I find the sentence in count III reasonable and I have no reason to interfere with it.

11. The failure to consider the foregoing factors by the magistrate was a mistake as well as an irregularity in sentencing. For this reason, I invoke Section 364 of the Criminal Procedure Code and make the following orders:-

(a) That the sentences of six (6) years imprisonment in Counts I and II are hereby set aside and substituted with three (3) years imprisonment for each of the counts.

(b) That the sentence on Count III remains as was imposed by the learned magistrate.

(c) That the order for concurrence of the sentence stands as ordered by the court.

(d) The orders herein to be served on the State and on the applicant within seven (7) days.

12. It is hereby so ordered.

**DATED AND SIGNED AT EMBU THIS 27<sup>TH</sup> DAY OF SEPTEMBER, 2017.**

**F. MUCHEMI**

**JUDGE**