



**REPUBLIC OF KENYA**

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

**CRIMINAL REVISION NO. 281 OF 2015**

**JOSEPH JUMA .....APPLICANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

*(Being a Revision from the order of Butere Principal Magistrate's Court Criminal Case No.6 of 2014 by Hon. E.S.Olwade, Principal Magistrate on 4<sup>th</sup> September, 2014)*

**RULING ON REVISION**

1. Joseph Juma was charged with the offence of grievous harm contrary to section 234 of the Penal Code. After a full trial, the applicant was convicted of the said offence and sentenced to serve 6 years imprisonment with effect from 4th September, 2014.
2. The applicant herein filed an appeal on 30th September, 2014, which was determined by Justice Bwonwonga in his judgment dated and delivered on 24th July, 2015. The conviction and sentence imposed on the applicant was upheld.
3. The matter was referred to this court for revision of the applicant's sentence in accordance with the provisions of section 364 of the Criminal Procedure Code Cap 75, Laws of Kenya.
4. A Probation Officer's report on record dated 3rd December, 2015 indicates that the applicant has undergone spiritual counseling sessions in prison. He has also learnt agro-forestry which he is willing to introduce at home.
5. The Probation Officer notes that the applicant qualifies for a non-custodial sentence and recommends that he serves the remainder of his prison term under community service.
6. The applicable provisions of law herein is Section 364 (5) of the Criminal Procedure Code which provides that:-

***"when an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed."***

7. Having noted that the applicant's appeal was heard and determined by a court of concurrent jurisdiction, this court is ***functus officio*** and has no jurisdiction to revise the sentence that was meted out to the applicant. The only recourse available to him is that of filing an appeal to the Court of Appeal.
8. For the foregoing reasons, I decline to revise the sentence that was meted out to the applicant.

It is so ordered.

**DELIVERED, DATED and SIGNED at KAKAMEGA** on this 29th day of April, 2016.

**NJOKI MWANGI**

**JUDGE**