



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT VOI

CRIMINAL REVISION NO 158 OF 2016

K P A..... APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING OF THE REVISION

INTRODUCTION

1. By a letter dated 13th September 2016 filed on 14th September 2016, the Applicant moved the court for a revision of the sentence she said had been meted upon her on 8th April 2016 by the Trial Magistrate, Hon K.I. Orange, Senior Resident Magistrate in **Cr Case No 166 of 2016 Republic vs K P A** at Wundanyi Law Courts. However, this court noted from the proceedings of the lower court that it was in fact Hon G.M. Gitonga, Resident Magistrate who was seized of this matter and convicted her.

2. She had been charged with the offence of causing grievous harm contrary to Section 234 of the Penal Code Cap 63 (Laws of Kenya). The particulars of the Charge were as follows :-

“On the 4th day of December 2015 at [particulars withheld] within Taita Taveta County, willfully and unlawfully assaulted V M, thereby occasioning her actual bodily harm.”

3. She pleaded guilty to the said Charge and was sentenced to serve five (5) years’ imprisonment. In her application, she stated that she pleaded to the Charge not knowing the consequences and magnitude the offence carried(**sic**), an offence she said she committed in anger after she found her husband, who had since abandoned her and the Complainant, in the act of love making. She added that she was a mother of five (5) children, two (2) of whom were school going but that after her incarceration, they had stopped going to school.

4. Her Written Submissions in response to the State’s Written Submissions dated 1st October 2016 and filed on 2nd November 2016 were filed on 10th November 2016. She merely re-hashed what she had stated in her application for Revision.

5. In its written Submissions, the Respondent submitted that the Applicant had committed an offence which was a felony and that it was more atrocious than crimes that were designated as misdemeanours. It contended that Section 234 of the Penal Code provides that **“a person who unlawfully does grievous harm to another is guilty of a felony and is liable for imprisonment for life.”**

6. It was its argument that the penalty that was imposed on her by the Learned Trial Magistrate was thus not excessive in the circumstances. It relied on the case of **Daniel Kyalo Muema vs Republic [2009]**

eKLR but did not indicate on what point of law the said case was supporting. All the same it urged this court to dismiss the present application for Revision.

LEGAL ANALYSIS

7. As was held by the Court of Appeal in the case of **Daniel Kyalo Muema vs Republic** (Supra), unless a contrary intention is shown, where an accused person is convicted and is “liable to imprisonment for life”, it connotes the maximum penalty and not the mandatory penalty that can be handed down. Further, a court can impose a fine in place of a custodial sentence by virtue of Section 26(3) of the Penal Code.

8. To determine if the sentence that was meted out to the Applicant was illegal and improper thus fit for this court to exercise its power under a revision, this court had due regard to the circumstances of the case herein. It was evident from the P3 Form that the Applicant hit V M’s house (hereinafter referred to as “the Complainant”) on the head with a blunt object and also poured a corrosive substance on her face.

9. As a result the Complainant suffered bruising and cut wounds on the head, chemical burns and loss of consciousness. The doctor who completed the said P3 Form observed visible peeling of the Complainant’s skin and bleeding from her ears and nose. The said doctor categorised the injuries she had sustained as “Grievous harm.”

10. Before passing his sentence on the Applicant herein, the Learned Trial Magistrate directed that a Probation Report be prepared. In his Judgment, he empathised with the Applicant as she had committed a crime of passion. However, he said that he could not lose sight of the fact that the injuries were occasioned to the Complainant while she was pregnant and were near fatal. He tempered mercy with justice and sentenced the Applicant to five (5) years imprisonment.

11. A perusal of the said Probation Report showed that the Applicant was said to have appeared indifferent and that she had become a security threat to the Complainant who was her co-wife and that in fact, her husband had relocated from her to escape her violence against him. The Probation Officer recommended that the Applicant be institutionalised to help her reflect on her anger and instill some discipline in her.

12. Undoubtedly, the injuries the Applicant inflicted on the Complainant were serious and must have traumatised her. By the time she committed the offence, she had acknowledged that the Complainant had become her co-wife and relocated to Voi. However, on the material date, she went to where the Complainant stayed at night with the sole intention of fighting her and then returned to Voi. This pointed to pre-meditation on her part. In fact, the injuries she inflicted on the Complainant only pointed to an intention of causing her death or permanent incapacity.

13. It was therefore the view of this court that the Learned Trial Magistrate was extremely lenient when he sentenced the Applicant to five (5) year’s imprisonment. Indeed, this court was very tempted to enhance the said sentence as it had power to do so under the provisions of **Section 364 (1) (a) of the Criminal Procedure Code** Cap 75 (Laws of Kenya).

14. The said Section provides as follows:-

“In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may—

(a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence.”

15. Be that as it may, this court noted that the Applicant was a first offender, that she pleaded guilty to the charge and thus saved the trial court time that would otherwise have been spent in hearing the matter herein, she had committed a crime of passion while blinded by jealousy and that neither the State nor the

Complainant were unhappy with the sentence that was meted on her because none of them had asked this court to enhance the same.

16. In the circumstances foregoing, having considered the Applicant's application for Revision, her Written Submissions along with those of the Respondent and the case law it relied upon, it was this court's considered opinion that the penalty that was meted upon the Applicant by the Learned Trial Magistrate was just, legal, correct and proper. Notably, the said Learned Trial Magistrate exercised his discretion judiciously as the maximum sentence prescribed for the offence the Applicant had been charged with was life imprisonment.

17. This court was therefore in agreement with the Respondent's submissions that there was no justification in this court disturbing the said Learned Trial Magistrate's conclusion.

DISPOSITION

18. For the foregoing reasons, this court's decision was that the Applicant's application for Revision that was dated and filed on 14th September 2016 was not merited and the same is hereby dismissed. Instead, this court affirms the sentence that was meted upon her.

19. It is so ordered.

DATED and DELIVERED at VOI this 15th day of December 2016

J. KAMAU

JUDGE

In the presence of:-

Knight Peter Ambale.....Applicant

Miss Anyumba.....for Respondent

Josephat Mavu- Court Clerk