



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**CRIMINAL REVISION NO. 5 OF 2015**  
**LAWRENCE WACHIRA MIANO.....APPLICANT**  
**VS**  
**REPUBLIC.....RESPONDENT**

**REVISION**

1. This is a revision arising from a conviction and sentence in Kerugoya Chief Magistrate Court Criminal case NO. 282 of 2013 where **LAWRENCE WACHIRA MIANO** was charged with the offence of Grievous Harm contrary to **Section 234** of **Penal Code**. The particulars as per the charge sheet which was amendment to an initial charge of assault causing bodily harm contrary to **Section 251** of **Penal Code**, shows that the accused on 18<sup>th</sup> day of June 2013 at **KIAWAKARA** village within Kirinyaga County unlawfully did grievous harm to one **RUTH WANJIRA NGURE** the complainant at the trial.
2. The record of proceedings and the judgment has been brought to my attention vide a letter dated 23<sup>rd</sup> April 2015 from the trial magistrate addressed to this court for purposes of revision under **Section 363** of the **Criminal Procedure Code**.
3. The basis for revision that the accused was convicted and sentenced on a charge of assault causing bodily harm which charge had been amended on 8<sup>th</sup> July 2003 and substituted with a new charge sheet which was read to the accused and pleaded not guilty as per the record which has been forwarded to this court .
4. It is apparent from the record of proceedings at the trial related to the new charge sheet but the initially charge sheet was not endorsed to reflect that it had been amended . This is an inadvertence which appeared to have led the trial magistrate after the trial to write a judgment where he inadvertently convicted and sentenced the accused on a nonexistent charge as the same had been substituted.
5. I have examined the proceedings on record and the basis upon which the file has been placed before me. It is clear that both the conviction and sentence were incorrect and irregular. In exercise of my powers under **Article 165 (6)** and **(7)** of the **Constitution** and **Section 362** of the **Criminal Procedure Code**, it is fair and just to revise both the conviction and sentence.
6. I have examined the evidence adduced at the trial and I am satisfied that the evidence was sufficient to sustain the charge of causing Grievous Harm against the accused. Under **Section 364** of the **Criminal Procedure Code** I hereby set aside the incorrect conviction and sentence imposed by the trial magistrate and in its place enter a conviction against the accused for the offence of Grievous Harm contrary to **Section 234** of **Penal Code** as per the substituted charge dated 8<sup>th</sup> July 2013. He is convicted accordingly and pursuant to **Section 364 (2)** **Criminal Procedure Code** he is required to

appear before this court on 28<sup>th</sup> April 2015 for purposes of being informed of revision and to be given an opportunity of being heard before the correct legal sentence is imposed against him. Production order to issue.

**R.K.LIMO**

**JUDGE**

**DATED, SIGNED AND DELIVERED AT KERUGOYA THIS 27<sup>TH</sup> DAY OF APRIL 2015**

28/4/2015

Before

Hon. R.Limo Judge

CC - Mbogo

Sitati for State

Accused/Convict - present

Interpretation - English/Kikuyu

Sitati for State present

Lawrence Wachira Miano present

COURT

The accused is given explanation in Kikuyu language on the basis of revision made by the Court and is invited to address the Court before sentence.

LAWRENCE WACHIRA MIANO

I have done this case for 2 years and four months in custody. While at remand, I suffered. I am asthmatic and I have cancer. I had prayed for a retrial but the same was turned down. I pray that I be given the sentence I had been given by trial Court. My family is suffering.

COURT

This Court has considered the mitigation by the accused but it is also in the interest of justice to consider the injuries that accused inflicted on the complainant which were serious. He is sentenced to serve twelve years imprisonment.

Right of appeal 14 days.

**R.K. LIMO**

**JUDGE**

**DATED, SIGNED AND DELIVERED AT KERUGOYA THIS 28<sup>TH</sup> DAY OF APRIL, 2015**