

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL APPEAL NO. 21 OF 2014

DAVID NJAGI KAVUIRA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Appeal from the Sentence and Conviction of P. BIWOTT Senior Principal Magistrate Embu in Criminal Case No. 298 of 2013 on 10th July, 2014)

RULING

The applicant was convicted of the offence of causing grievous bodily harm contrary to Section 234 of the Penal Code. He was sentenced to serve six years imprisonment.

The accused has now applied for revision under Section 362 and 364 of the Criminal Procedure Code urging the court to reduce his sentence or give him a reasonable sentence with an option of fine to enable him look after his family. He states that his wife who is pregnant is hospitalized in Embu Provincial Hospital leaving their child with no one to look after it. The applicant gives mitigating factors for reduction of sentence.

Section 362 gives the High Court power to revise orders of any subordinate court ***“for the purpose of satisfying itself as to the correctness, legality, or propriety of any finding, sentence or order, ... and as to the regularity of any proceedings of any such subordinate court”***.

The provision is very clear that the High Court may only interfere with the order of the subordinate court only where the subordinate court's order was either incorrect, illegal or improper.

The offence of causing grievous harm carries a maximum sentence of life imprisonment. The sentence of six (6) years imprisonment was lawful and reasonable considering the circumstances of the offence.

I reach the conclusion that there was no irregularity, illegality or impropriety committed by the subordinate court in this case. The applicant was given an opportunity to mitigate before the trial court. He told the court that he had a wife and children who are in school.

This court has no jurisdiction to entertain mitigation under the provisions of section 364 of the Criminal Procedure Code. Reduction or substitution of sentence cannot be done by this court on the basis of mitigation.

This application does not meet the requirement of the provisions of Section 362 and 364 of the Criminal Procedure Code which would justify this court to intervene. The application for revision is therefore dismissed.

DELIVERED, SIGNED AND DATED AT EMBU THIS 23RD DAY OF OCTOBER, 2014.

F. MUCHEMI

JUDGE

In the presence of the Applicant