

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL MISC. APPLICATION NO. 128 OF 2012

S R M APPLICANT

V E R S U S

REPUBLIC RESPONDENT

RULING ON REVISION

The applicant was charged with the offence of assault causing actual bodily harm contrary to **section 251** of the **Penal Code**. The particulars of the offence were that the applicant *on the 3rd day of June 2012 at [particulars withheld] in Vihiga County within Western Province unlawfully assaulted A A thereby occasioning her actual bodily harm.*

The applicant pleaded guilty and he was sentenced to serve three years imprisonment. I have gone through the facts as explained by the prosecutor before the trial court. The applicant was living with the complainant who is the applicant's niece. The circumstances were that the complainant seems to have been defiled by somebody else and the applicant tried to find out from the complainant what had happened. The complainant tried to hide and the applicant herein got annoyed and burnt the complainant with a hot spoon. I have seen the P3 form which indicates that the complainant was aged 8 years old was defiled on the 3.6.2012. Although the applicant committed an offence, I do find that her action was out of anger as the child decided to hide information that could have been used to arrest the defiler. The trial court ought to have looked at the bigger picture and consider the offence of defilement as a more serious offence compared to that of assault. The applicant herein was the one taking care of the complainant and putting her in jail will not serve substantive justice. I do find that the application is merited. The sentence of three years imprisonment is hereby reviewed and replaced with the period already served. The applicant shall be set at liberty unless otherwise lawfully held.

Delivered, dated and signed at Kakamega this 30th day of October 2013

SAID J. CHITEMBWE

J U D G E