



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Criminal Revision 367 of 2012**

**MAURICE ALDOUS OPAR.....APPLICANT**  
**VERSUS**  
**REPUBLIC.....RESPONDENT**  
**RULING**

The application before me was filed under a certificate of urgency on 26<sup>th</sup> June, 2012. In the application, Maurice Aldous Opar (the applicant) prays for orders as follows:-

- 1. That this application be certified urgent in the first instance and be heard ex-parte.**
- 2. That the honourable court be pleased to hear the applicant for orders to review and/or vary the sentence imposed on him as shall be determined by the honourable court on the grounds that:-**
  - (a) The applicant is suffering from Nephritic Syndrome and a combination of other conditions and is in need of specialized treatment and management.**
  - (b) The applicant has already served duration of seven (7) months.**
  - (c) That the applicant can be committed to alternative punishment or non custodial sentence.**

The application is supported by an affidavit sworn by the applicant on 21<sup>st</sup> June, 2012 in which he avers that he suffers from Nephritic Syndrome, hypertension, diabetes mellitus and failing vision and his medical condition is proving difficult to manage in prison. He therefore seeks that his sentence be revised so that he can serve a non-custodial sentence. For purposes of record, the sentence he seeks to revise was imposed in **Kibera Chief Magistrate's Court Criminal Case No. 3430 of 2006.**

How did a criminal matter land in my docket? Sometimes in June 2012 I was among judges who participated in a prison decongestion exercise under the leadership of the CSO Chairman. Among the matters I handled was **Nairobi High Court Criminal Revision Case No. 295 of 2012, Maurice Alois Opar V Republic.** After considering the matter I found no reason for revising the sentence and remarked as follows:-

**“I have considered the C.S.O. report and I have also considered the offence committed and the period the convicted person has already served. I find the sentence imposed is reasonable and the same is therefore not varied.”**

To me, I thought that was the end of the matter. However, on 5<sup>th</sup> November, 2012 the Principal Judge, Mr. Msagha Mbogoli directed that the case file for this matter (**High Court Criminal Revision Case No. 367 of 2012 Maurice Alois Opar vs. Republic**) be placed before me. The request to have the matter placed before me was made by the applicant. That is why I am now being asked to revise the applicant's

sentence for the second time.

I will start by considering the merits of the application. This being a matter which came before me by way of revision, I need not have heard the applicant - see **Section 365 of the Criminal Procedure Code**. I nevertheless acted on the proviso to the above stated section and gave the applicant a hearing. I also called for a probation officer's report and the said report indeed recommends that the applicant is a person fit to be considered for a non-custodial sentence.

I have carefully gone through the records of the lower court and find that the sentences imposed in respect of all the three counts for which he was convicted are correct, legal and proper. The applicant has, however, asked this court to consider his medical condition and order that he serves the remainder of his prison sentence on C. S. O. Although there is a letter from one Joseph M. Okinda indicating that the applicant has reformed, I do not find anything in that letter to show that the applicant's medical condition cannot be managed from prison. No good reason has therefore been advanced to make me vary the applicant's sentence. The application for review of sentence would therefore collapse at this stage. However, something more has to be said about this application.

This matter speaks much about the operations of court registries. If the registries were computerized then this revision file would not have been opened in the first place since it would have been clear that the applicant's sentence had been considered in **H.C. Criminal Revision Case No. 295 of 2012** and orders made accordingly.

Furthermore the file in respect of **H.C. Criminal Revision Case No. 295 of 2012** would not have been opened since the applicant had already filed an appeal namely **Nairobi High Court Criminal Appeal No. 315 of 2011**. It is clear that when the file came to me for revision in **H.C. Revision Criminal Case No. 295 of 2012** the information that the applicant had filed an appeal was not availed to the court. The revision in **H.C. Criminal Revision Case No. 295 of 2012** was therefore wrong since the applicant had a pending appeal which he ought to have pursued.

Even if the applicant deserves a revision of his sentence, the request would still fail for the reason that this court has no jurisdiction to revise its decision issued on 4<sup>th</sup> June, 2012 in **H.C. Criminal Revision Case No. 295 of 2012**.

This was a matter which from the beginning ought not to have come for revision. The net result is that the applicant's application for revision of his sentence fails and the same is dismissed. The applicant will continue serving the sentence in prison.

Dated and signed at Nairobi this 30<sup>th</sup> day of November, 2012

**W. K. KORIR**

**JUDGE**