

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CONSTITUTIONAL REFERENCE NO. 2 OF 2011

WILSON WANDERI MIGWI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING ON REVISION

WILSON WANDERI MIGWI, hereinafter referred to as the applicant, was convicted on his own plea of guilty for the offence of creating a disturbance in a manner likely to cause a breach of the peace contrary to *Section 95 (1) (b)* of the Penal code. It is stated that on 12th February 2011 at Huhoini area the Applicant created a disturbance likely to create a breach of the peace by threatening to hit Rahab Nyakaria with a fork jembe and referred to her as stupid. The applicant was then sentenced to serve 1 year imprisonment. The file was thereafter placed before this court for perusal under *Section 362* of the Criminal Procedure Code.

In exercise of this court's revisionary jurisdiction, I perused the proceedings of the convicting court. The court exercises the revisionary jurisdiction under *Section 362* of the Criminal Procedure Code in order to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed. I have perused the proceedings before the trial court and it is very clear that the Applicant herein was sentenced to serve 1 year imprisonment on a conviction for the offence under *Section 95 (1) (b)* of the Penal Code. Under the aforesaid Section, the law prescribes a maximum sentence of six (6) months imprisonment. It is therefore obvious that the sentence meted out by the trial court was illegal. Such a decision can be revised by this court in exercise of its powers of revision. The record shows that the Applicant was treated as a first offender. He pleaded for leniency. There is also an allegation that he committed the offence under the influence of alcohol. The offence was that committed by the Applicant against his mother. The facts outlined by the court prosecutor were to the effect that the Applicant had arrived at his mother's home at about 10.00 p.m. He demanded to be given food but none was available. He started abusing his mother by calling her stupid. The mother screamed and sought for help from the members of the public who came, overpowered the applicant and took him to the police station. Though the applicant was a first offender, he will not attract the sympathy of the court. Such a person should be kept in custody for a while to enable him reform and reflect on his unlawful actions he visited on a parent. The sentence of 1 year imprisonment is set aside. Pursuant to the provisions of *Section 364 (1) (a)* as read with *Section 354 (3) (a) (iii)* I substitute the sentence of 1 year to that of 4 months imprisonment. The aforesaid term to run from the date of sentence.

Dated and delivered at Nyeri this 17th day of June 2011.

J. K. SERGON

JUDGE

Makura: The appellant was released on presidential amnesty.