

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CRIMINAL REVISION NO. 15 OF 2010

SHEM ONGORO SERETI1st CONVICTEE
 ELIJAH BOARAKE SERETI2nd CONVICTEE
 -VERSUS-
 REPUBLIC.....RESPONDENT

RULING ON REVISION

By a letter dated 6th September, 2010 and filed in court on the same day, **Messrs S. M Sagwe & Advocates**, sought that this court in the exercise of its jurisdiction in revision, call up the original record in respect of **Keroka SRM CCR No. 1096 of 2009** so as to satisfy itself as to the correctness, legality or propriety of the sentence imposed by the trial court on the convictees on or about 14th May, 2010.

Apparently, the convictees were charged with the offence of grievous harm contrary to section 234 of the **Penal code** in the aforesaid criminal case. It was alleged that on 22nd February, 2002 at Kenyena village in Nyamira district within Nyanza province, they jointly and unlawfully did grievous harm to **Jemima Nyamoita**. They pleaded not guilty to the charge and were tried. At the end, the learned magistrate found them guilty and sentenced each one of them to 6 years imprisonment. It is this sentence that has provoked the plea for revision.

Reading through the letter, it appears that the complaint is that the sentence imposed as aforesaid was not merited and that it ought to be enhanced. Counsel who authored the letter must be aware that sentencing is a matter for the discretion of the trial court. Unless the sentence imposed is illegal, this court whether in its revisionary or appellate jurisdiction cannot interfere with such sentence. In any event an exercise of discretion cannot be the basis of an appeal and or an order of revision unless of course the discretion has been exercised capriciously. I do not discern such caprice in the circumstances of this case. The offence charged attracts a maximum sentence of life imprisonment upon conviction.

The Convictees were sentenced to 6 years imprisonment each. The learned magistrate must have had his reasons for imposing such a sentence and he cannot be faulted. That sentence may have been lenient to the complainant considering the injuries and circumstances of the offence but was nonetheless legal and cannot be the subject of revision. Afterall revision is all about correctness, legality, propriety and or regularity of any finding, sentence or order recorded by the subordinate. It is not about harshness or leniency of the sentence imposed. Nothing from the trial court’s record suggests that the proceedings, subsequent conviction and sentence of the convictees were marred with any incorrectness, illegalities and irregularities nor was there any evidence of impropriety.

That being my view of the matter, the request for revision was uncalled for. It is denied.

Revision dated, signed and delivered at Kisii this 15th day of October, 2010.

ASIKE-MAKHANDIA

JUDGE