



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
REVISION NO. 58 OF 2010

REPUBLIC.....APPLICANT

VERSUS

ALEXANDER NDWIGA.....RESPONDENT

8/11/2010

Before W. Karanja J

In Chambers

Court

This file has been placed before me for Revision under **Section 362** and **Section 364 of the Criminal Procedure Code**. Under Section 362, this court has power to call for and examine the record of any criminal proceedings before any subordinate court for purposes of satisfying itself as to the correctness, legality and propriety of any finding, sentence, or order recorded or passed and as to the regularity of any of the proceedings.

In this case the state is complaining that the sentence meted out was too lenient and thus inappropriate. I have perused the proceedings before the trial court. I have noted that the learned trial magistrate did refer the matter to the Probation/CSO Officer for a pre-sentencing report before she passed the sentence. It was actually the Probation/CSO Officer who recommended the Accused person as suitable for community service. This matter revolves around the same family. They bear grudges against one another and these grudges are not likely to abate just because the Accused person is given a long custodial sentence. The purpose of sentencing is not solely to punish the offender. This in my view was not an appropriate case for the doctrine of just desserts to be applied. It was note a case of an eye for an eye or a limb for a limb as it were. The magistrate must have had that in mind when she sentenced the offender to community service. Although she should have given reasons for the sentencing in her pre-sentencing notes, which she did not give, my finding is that the 1 year of community service imposed on the accused person though lenient is not irregular, illegal or otherwise inappropriate in the circumstances.

I do not find any abuse of discretion by the learned magistrate in this case. In any event, if the complainant feel so aggrieved, she still has recourse to sue the Accused person for compensatory damages in a civil court. Enhancing the sentence will not in my view improve the relationship between the parties and their families. It may avenge the complainant's pain – but again, that is not what sentencing should be all about.

The long and the short of all this is that I see no need to interfere with the sentence herein. The same is lawful and not totally inappropriate in the circum stances. The application for revision must therefore fail

The same is hereby disallowed. The Accused person to continue serving the sentence passed by the trial court.

W. KARANJA
JUDGE
8/11/2010

