



**Wandesa v Republic (Miscellaneous Criminal Application  
E042 of 2024) [2025] KEHC 1636 (KLR) (24 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1636 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
MISCELLANEOUS CRIMINAL APPLICATION E042 OF 2024  
JN ONYIEGO, J  
FEBRUARY 24, 2025**

**BETWEEN**

**ABDUL MUNGANA WANDESA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being a revision application against the sentence dated 30-09-2024 delivered  
by Hon. T. M. Mwangi (CM) in Garissa Criminal Case No. E464 of 2024)*

**RULING**

1. The applicant was charged with the offence of grievous harm contrary to section 234 of the [Penal Code](#). The particulars of the offence were that on 27.08.2024 at around 0400hrs at Madogo area in Madogo location within Tana River County, he unlawfully did grievous harm to Rushani Salim.
2. He pleaded guilty to the charge and the trial court convicted him on his own plea of guilty. On mitigation, he urged that he has children and that they were suffering noting that he was in custody. The trial magistrate consequently sentenced him to 4 years' imprisonment.
3. He has since approached this court via an undated chamber summons seeking for reduction of sentence citing reasons inter alia that he is remorseful. He stated that he had spent a period of four months in prison and had reformed. That he wished to be set free so that he could go home and provide for his children who according to him, were now living with his old parents having failed to secure school fee.
4. The application was canvassed by way of oral submissions.
5. The applicant submitted that the sentence by the trial court was harsh in the given circumstances and therefore urged this court to consider a non-custodial sentence instead. In opposition to the same, Mr. Okemwa, the learned prosecution counsel urged that this court lacked the requisite jurisdiction to



grant the prayers sought. That the applicant if dissatisfied with the finding of the court, ought to have preferred an appeal against the sentence instead of seeking for revision.

6. Upon considering the application, the record from the trial court and the opposing arguments of the respondent, I find that the only issue for determination is whether the application is merited and sentence ought to be revised.
7. It is trite that sentencing is at the discretion of the trial court and therefore, this court must be careful not to interfere with such a decision, unless it is demonstrated that the sentence was manifestly excessive, was illegal, improper or founded on misrepresentation of material facts.
8. In the case of Francis Karioko Muruatetu & Another vs Republic, Petition Number 15 of 2015, the Supreme Court in considering the provisions of section 329 of the [Criminal Procedure Code](#) gave guidance on sentencing as follows:

“The court may, before passing sentence, receive such evidence as it thinks fit in order to inform itself as to the proper sentence to be passed...It is without a doubt that the court ought to take into account the evidence, the nature of the offence and the circumstances of the case in order to arrive at the appropriate sentence.”

[ Also see the Judiciary Sentencing Policy Guidelines 2016].

9. In the present case, the trial magistrate noted that the applicant was a first offender. He went ahead to call for a pre-sentence (social inquiry) report and noted that the applicant in his mitigation, stated that his family depended on him. The trial court also noted that the act of domestic violence was unprovoked and unjustified and therefore, the case deserved a deterrent, retributive and reformatory sentence.
10. The forgoing notwithstanding, this court has independently perused the P3 Form and the treatment notes and therein, the reviewing doctor noted that the complainant presented with a swollen right arm and soft tissue injury. She had pain in the neck and deep tissue injury. Additionally, the doctor noted that there was no significant injury. Infact, the doctor indicated that he managed the situation by giving the complainant pain killers. In my mind, I find it hard to fathom how after finding no significant injury, the doctor still proceeded to assess the injuries suffered by the complainant as grievous harm. I say so for the reason that the assessment was not supported by the evidence on injury and the manner of management.
11. The above has attracted the court’s attention and has kicked into action this court’s powers as provided under Article 165 as well as Sections 362, and 364 of the [Criminal Procedure Code](#). Article 165(6) of [the constitution](#) stipulates that the High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.”
12. Section 364 of the [Criminal Procedure Code](#) gives the High Court the power to revise Sentence. It provides;
  1. In the case of a proceeding in a subordinate court, the record of which has been called for or which has been reported for order, or which otherwise comes to its knowledge, the High Court may –
    - a. In the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354.357 and 358 and may enhance the sentence;



b. In the case of any other order other than an order of acquittal, alter or reverse the order.

(2) No order under this section shall be made to the prejudice of an accused person unless he had an opportunity of being heard either personally or by an advocate in his own defense:

Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.

...

13. It is incumbent upon this Court therefore to consider in totality, the decision of the trial magistrate against the parameters of correctness, legality and propriety. To that end, I am inclined to come to the finding that this sentence was excessive considering the circumstances leading into the commission of the offence and the exaggerated nature of the injuries suffered.
14. In the case of Republic vs Idojo (Criminal Case E008 of 2024) [2024] KEHC 4114 (KLR) (26 April 2024) the accused killed her husband and was sentenced to 3 years' probation after serving one year in remand custody.
15. In the case of State vs Truphena Ndonga Aswani (2021) eKLR where the accused was sentenced to one day imprisonment after she attacked her husband who was also found to be a violent man and the accused had persevered domestic violence over a long period of time.
16. In the case of Republic vs Odour (Criminal Case E045 of 2023) [2024] KEHC 9625 (KLR) (Crim) (30 July 2024) (Sentence), Mutende J. considered the circumstances under which the offence was committed, the unprintable words hurled by the deceased which provoked the accused and proceeded to sentence the convict to serve six (6) years imprisonment with effect from the date of arraignment.
17. Guided by the above case law and further, having in mind that the complainant and the applicant herein were husband and wife and further noting that he saved the court its precious time when he pleaded guilty, I am persuaded to set aside the 4 years sentence which I find harsh in the circumstances and replace the same with a sentence of 2-years imprisonment to be computed from the time of the pronouncement of sentence by the trial court.

ROA 14 days.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 24<sup>TH</sup> DAY OF FEBRUARY 2025**

**J. N. ONYIEGO**

**JUDGE**

