



**Ywaya v Republic (Miscellaneous Criminal Application 123 of 2024)
[2025] KEHC 2122 (KLR) (14 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2122 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
MISCELLANEOUS CRIMINAL APPLICATION 123 OF 2024**

**DK KEMEL, J
FEBRUARY 14, 2025**

BETWEEN

NICHOLAS WASONGA YWAYA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein Nicholas Wasonga Ywaya filed the present application dated 15/10/2024 seeking for review of sentence. The Applicant's case is that, he was sentenced to serve 15 years imprisonment for an offence of grievous harm contrary to Section 234 of the *Penal Code* vide Bondo Senior Principal Magistrate's Court Criminal Case No. E286 of 2022. That the trial court omitted the sentiments of the victim vide the Victim Impact Assessment report. That the victim is the Applicant's second wife. That he seeks this court to intervene and save the sanctity of marriage.
2. The application was canvassed by way of oral submissions.
3. The Applicant relied on the content in his affidavit in support. He contended that he has served a substantial portion of the sentence. That his children are suffering and that he needs to rejoin them.
4. Learned counsel for the Respondent submitted inter alia; that the law stipulates a sentence of life imprisonment; that the victim suffered severe injuries and that the court was lenient; that the Applicant be ordered to continue serving his sentence.
5. I have considered the Applicant's application and the rival submissions. It is noted that the Applicant was charged with two counts as follows:



Count I

Grievous harm contrary to Section 234 of the *Penal Code*. Particulars are on the 13th day of September 2023 at 2330 hours at Usenge village, Onyimore Sub-location, Gem Wagai Sub County within Siaya County did grievous harm to Vivian Anyango Dhaya.

Count II

Malicious damage to property contrary to Section 339(1) of the *Penal Code*. Particulars are that on the 13th day of September 2023 at 2330 hours at Usenge village, Onyimore sub Location, Gem -Wagai Sub Conty within Siaya County willfully and unlawfully damaged a phone make Tecno POP 4 worth Ksh12,000/= the property of Vivian Anyango Dhaya.

The Applicant pleaded guilty to both charges and was duly convicted and sentenced. He has now approached this court for revision of the sentence. The only issue for determination is whether the application has merit.

6. It is noted that the Applicant was sentenced in Count I grievous harm contrary to Section 234 of the *Penal Code* which provides as follows:

“Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.”

The Applicant was sentenced to serve 15 years imprisonment after the trial court had considered the Applicant’s mitigation and the sentiments of the Probation Officer in the pre-sentence report filed on 9/10/2023.

7. I have perused the said pre-sentence report which revealed inter alia; that the victim who was then eight months pregnant was the Applicant’s second wife; that the Applicant cut the victim on the head after smashing her phone on the floor; that the doctors decided to save the unborn child as the victim was at the time unconscious and had to use a caesarian section and delivered a healthy baby boy; that the injuries sustained by the victim are quite serious and life threatening and that at the time of preparing the report, she had not recovered her speech and still needed medication. It is clear that the Applicant intended to kill his second wife had it not for members of public to rush to her aid. It is quite strange that the Applicant seeks for review of sentence so as to go back home and help the victim come out of hospital since he is the sole bread winner for his family. The victim could as well have died if it had not been the doctors’ intervention that saved her and her unborn child. I find the circumstances do not warrant a review of the Applicant’s sentence. Indeed, the trial court is quite lenient. As the Applicant has been indicated by the victim as a violent person the custodial rehabilitation will help to mould him into a better person before being released back to the society. In fact, he has barely served his sentence as there is no report from the prison over any progress regarding his rehabilitation.
8. In the result, I find the Applicant’s application dated 15/10/2024 lacks merit. The same is dismissed. The Applicant should continue serving his sentence to completion.

DATED AND DELIVERED THIS 14TH DAY OF FEBRUARY, 2025.

D. KEMEI

JUDGE

In the presence of:

Nicholas Wasonga Ywaya..... Applicant



M/s Kerubo..... for Respondent

Ogendo..... Court Assistant

