



**Makau v Republic (Miscellaneous Criminal Application E081 of 2023)
[2024] KEHC 10795 (KLR) (18 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10795 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
MISCELLANEOUS CRIMINAL APPLICATION E081 OF 2023**

**FR OLEL, J
SEPTEMBER 18, 2024**

BETWEEN

PHILIP SILA MAKAU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

A. Introduction

1. The applicant was charged and convicted to serve three (3) years in prison for the offence of causing grievous harm contrary to section 234 of *Penal Code*. Through this application the applicant seeks that the court reviews the said sentence and consider placing him on probationary/ non-custodial sentence. The application is based on the grounds found on the face of the said application, the supporting affidavit of the applicant and also his submissions filed in court on 23rd February 2024.
2. The respondent counsel, opposed the application through oral arguments and did submit that based on the evidence adduced before the trial court, the conviction and sentence was proper and lawful thus and there was no need to interfere with the same. The accused was not remorseful hence custodial sentence handed down was proper, under the circumstances of this case, given the serious nature of offence committed.

B. Analysis of Law

3. I have considered the application by the applicant as well as the response by the state counsel/ODPP. The powers of the High court in revision are contained in Section 362 through to 366 of the *Criminal Procedure Code* (cap.75). Section 362 specifically provides as follows: -

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or



propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court”.

4. What the High Court can do under its revision jurisdiction is stated under Section 364 of the *Criminal Procedure Code*(Cap 75), which states as follows: -

- “(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 orders, 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 section 354, 357 and 358, and may enhance sentence;.
 - (b) in the case of any other order than an order of acquittal, alter or reverse the order.
- (2) No order under this section shall be made to the prejudiced of an accused person unless he had had an opportunity of being heard either personally or through an advocate in his own defence. 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.
- (3) Where the sentence dealt with under this section has been passed by a Subordinate Court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.
- (4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.
- (5) When an appeal arises from a finding, sentence or order and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.”

5. It has not been demonstrated that the trial magistrate committed any illegality, impropriety or mistake in convicting and sentencing the applicant. The sentence provided for the offence of grievous harm is life in imprisonment. Therefore, the sentence of three (3) years imposed by the trial court was within the law and by any standard, lenient even considering that the applicant was a first offender.

6. This court hands are also tied by Section 364(5) of the *Criminal Procedure Code*, cited above which calls on the applicant to file an appeal as against sentence if dissatisfied.

7. I find that this application is not merited given the serious nature of the offence the applicant was charged with vis-a-vis the sentence imposed.

8. The application is declined and is dismissed.

9. It is hereby so ordered.

RULING WRITTEN, DATED AND SIGNED AT MACHAKOS THIS 18TH DAY OF SEPTEMBER, 2024.

FRANCIS RAYOLA OLEL



JUDGE

DELIVERED ON THE VIRTUAL PLATFORM, TEAM THIS 18TH DAY OF SEPTEMBER, 2024

In the presence of: -

Applicant present from Machakos GK prison

Mr. Mangare/Ms Otulo for Respondent

Susan/Sam Court Assistant

