



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Loswarai v Republic (Criminal Revision E263 of 2021)  
[2023] KEHC 17584 (KLR) (22 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17584 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CRIMINAL REVISION E263 OF 2021**

**PM MULWA, J**

**MAY 22, 2023**

**BETWEEN**

**BERNARD LOSWARAI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being a revision from original conviction and sentence in Kiambu  
Criminal Case No. 148 of 2020 – Hon. G. Omodho, SRM)*

**RULING**

1. The applicant's application seeks revision of his sentence of five (5) years imprisonment for the offence of grievous harm contrary to Section 234 of the *Penal Code*.
2. Section 234 of the Penal Code, 'any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.'
3. The facts of the offence were that at about midnight on February 2, 2020 the complainant was at home when the applicant went there and sought to be given Kshs 500/=. The complainant did not have the money and the applicant picked a somali sword and stabbed him on the left shoulder. The complainant was taken to hospital and the matter reported to the police whereupon the applicant was arrested and charged.
4. The applicant initially pleaded not guilty but shortly after changed his plea to guilty and was convicted and sentenced. He now seeks the court's leniency. He says that he is remorseful and that as part of self-reflection and rehabilitation, he has reconciled with the complainant who is a sibling. The applicant contends he is a father of school going children and the sole bread winner of an extended family in Marsabit. He prays for a second chance.



5. In his supporting affidavit, the applicant deposes that in meting out the sentence, the trial court ought to have considered the since months he had spend in custody before conviction and sentence.
6. Having perused the lower court record I note the trial court took into account the time the applicant was in custody before conviction and sentence. While sentencing the applicant, the learned trial magistrate stated; '...I proceed to sentence the accused to five (5) years imprisonment less six and half months of custody.'
7. Early in these proceedings the court ordered a Probation Officer's Report to assist it in considering and assessing the applicant's circumstances and situation. A report was filed on February 13, 2023. I find it helpful to quote relevant parts of it as follows:

' Attitude of the inmate towards the offence

The inmate pleads for forgiveness and is sorry for his actions and the complainant had since forgiven him. He prays for an early release or a non-custodial sentence to be able to go fend for his family.

Complainant's views

The complainant could not be reached through his las known contact. He had not been seen home for the past one year though the family had been aware of his intention to withdraw the case before the accused was convicted and sentenced. The inmate's sister confirmed the complainant and the inmate were step brothers and had reconciled.

Prison rehabilitation

The inmate reported to have been taken through counselling on behavior change, power saw operation and welding. If released he commits to buy a power saw and start his own business.'

8. The Probation Officer concludes that the inmate is remorseful and is suitable for a non-custodial sentence.
9. From the report and the applicant's own affidavit, it is clear that the applicant is remorseful, and that he has learnt from the consequences of his error. The record of proceedings shows that he pleaded guilty, very early in the proceedings, an acknowledgment that he was aware of the error of his actions.
10. The Judiciary Sentencing Policy Guidelines point out at Paragraph 21.1 as follows:

' The overall objective of the criminal justice system is to convict those who have committed offences. Thus, persons pleading guilty contribute towards meeting this objective as well as enabling the victim to obtain justice without unreasonable delay. It also protects a victim from re-victimization that may occur during trial. Pleading guilty also saves the court's time.'

11. In light of the foregoing I think this is a case were the obtaining factors, that is, guilty plea, the term served and remaining sentence term less remission time, the applicant's conduct and the probation report, may all be considered to the benefit of the applicant.
12. Taking all the above factors into careful consideration, I find this is a case in which the court is called upon to exercise justice with mercy and impose a non-custodial sentence on the remainder of the prison term.



**Final Orders: -**

13. The applicant's sentence by the lower court is upheld but the remaining period of the prison sentence shall be commuted to a non-custodial sentence and served as a probation term.
14. Orders accordingly.

**RULING DELIVERED VIRTUALLY, SIGNED AND DATED AT KIAMBU THIS 22<sup>ND</sup> DAY OF MAY, 2023.**

.....

**P.M. MULWA**

**JUDGE**

**In the presence of:**

**Court Assistants: Mr. Kinyua/Duale**

Applicant: Present -virtually from Ruiru prison

Mr. Muriuki - for State/Respondent

