



REPUBLIC OF KENYA



**KENYA LAW**

THE NATIONAL COUNCIL FOR LAW REPORTING

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**Ndolo v Republic (Criminal Revision E199 of 2022)  
[2023] KEHC 17574 (KLR) (22 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17574 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CRIMINAL REVISION E199 OF 2022**

**PM MULWA, J**

**MAY 22, 2023**

**BETWEEN**

**LAURIN NAOMI NDOLO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being a revision from original conviction and sentence in  
Thika Criminal Case No. 2421 of 2017 – Hon. E. Riany, SRM)*

**RULING**

1. The applicant Laurin Naomi Ndolo was convicted for the offence of grievous harm contrary to section 234 of the Penal Code in Thika Criminal Case No 2421 of 2017 and sentenced to serve five (5) years imprisonment.
2. She has approached this court vide the instant application filed in court on July 8, 2022 wherein she seeks review of the five (5) years sentence she is currently serving and substitute it with a non-custodial sentence.
3. In her affidavit supporting the application, the applicant contends that the complainant had since forgiven her after they reconciled only that this information was not brought to the attention of the trial court in time to seek for withdrawal of the case.
4. Further, the applicant avers that she and the complainant are cousins and the two families had sought help from the area Assistant Chief to have the matter withdrawn after reconciling. She prayed for this court to grant her freedom and substitute her remaining prison term with a non-custodial sentence. This contention was grounded on the claim that she is married with one child and wished to be with her family and also have a chance to serve the greater good of humanity courtesy of the paralegal training she had gained at prison.



5. To support her prayer for review of sentence the applicant stated that she was a first offender; that she had fully reformed whilst in custody and was very remorseful for the actions she had taken. She prayed that her application be allowed and that she be granted a non-custodial sentence.
6. The application is not contested by the state.
7. The court called for a Probation Officer Report to be prepared to assist in making a decision.
8. I have considered the application and also looked at the probation officer's report. I find that, the only issue to determine is whether the sentence should be revised.
9. This being an application invoking the court's revisionary jurisdiction, it is important to set out the law that governs the exercise of the court's power of revision in criminal cases which is donated by Section 362 as read with Section 364 of the [\*Criminal Procedure Code\*](#).

Section 362, [\*CPC\*](#) states 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."

Section 364 which reads 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 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 has had an opportunity of being heard either personally or by 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) ...

(4) ...

(5) ..."

10. From a reading of the above provisions, it is clear that the court can only revise or interfere with an order or sentence passed by the trial court if it was satisfied that there was an illegality, error, or irregularity in the proceedings that gave rise to the challenged order or sentence.
11. As submitted by the applicant she seeks to have the remaining portion of her prison sentence substituted with a non-custodial sentence. The probation officer's report states she is remorseful.
12. In this instance the trial court after conducting a full hearing the learned trial magistrate found that there was overwhelming evidence that the applicant had grievously assaulted the complainant by pouring hot water on him as he slept. The applicant was then found guilty, convicted and then sentenced to the term of 5 years imprisonment.
13. The provisions of Section 234 of the [\*Penal Code\*](#) provide for the punishment for the offence and reads as follows;



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

14. I must state for the record that the trial court did not overlook any material factors when passing sentence and took into consideration the circumstances of the case and the fact that the applicant was a first-time offender.
15. Be that as it may, 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.”
16. The Probation Officer notes in her report that the applicant and the complainant had been in a relationship before this incident and the same was highly opposed by the family members. That the two have since reconciled after the complainant forgave her. The report concludes that the “inmate is remorseful and in view of the period she has served in custody, is suitable for a non-custodial sentence”.
17. From the report and the applicant’s own affidavit, it is clear that the applicant is remorseful, and that she has learnt from the consequences of her error.
18. In light of the foregoing I think this is a case where the obtaining factors, that is, remorse, forgiveness, the term served, the applicant’s conduct and the probation report, may all be considered to the benefit of the applicant.
19. 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**

20. 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.

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

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**P.M. MULWA**

**JUDGE**

**In the presence of:**

Court Assistants: Mr. Kinyua/Duale

Applicant: Present -virtually from Thika prison

Mr. Muriuki - for State/Respondent

