



**Mwanzio v Republic (Criminal Revision E154 of 2022)  
[2023] KEHC 21130 (KLR) (3 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21130 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CRIMINAL REVISION E154 OF 2022  
PM MULWA, J  
AUGUST 3, 2023**

**BETWEEN**

**DOMINIC KIVUNGUA MWANZIO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being a revision of the sentence in Thika CMCC No. E1221 of 2021)*

**RULING**

1. The appellant herein Dominic Kivugua Mwanzio was charged with the offence of grievous harm contrary to section 234 of the [Penal Code](#). The particulars were that on May 10, 2021 at Jua Kali, Thika West sub-county within Kiambu county unlawfully did grievous harm to Moses Mumu Ngaho.
2. On May 12, 2021 he pleaded guilty and was convicted on his plea of guilty. After considering his mitigation, the court sentenced Dominic to 5 years imprisonment. He now seeks a review of the sentence.
3. The court on December 20, 2022, called for a sentence review report, which was filed on June 9, 2023. In the report, the prison department states the applicant, while in prison, has received counselling and has engaged in carpentry, a skill he wishes to utilize as a source of income when he opens a workshop. The applicant is remorseful towards the offence, he states he acted out of anger and wishes to ask for forgiveness. He is willing to be committed to a non-custodial sentence as the period he has spent in custody has changed him. The report recommends a non-custodial sentence.
4. The issue for determination by the court is whether it should exercise its discretion and revise the five (5) years prison sentence imposed on the convict.
5. This court's powers of revision are set out under the provisions of sections 362 through 366 of the [Criminal Procedure Code](#). This court is sitting as a revision court and is mandated to call for and



examine the record of criminal proceedings of a subordinate court to satisfy itself as to the propriety and legality of the decision and that it has been made according to the law.

6. Specifically, section 364 of the *Criminal Procedure Code* 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 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 defence:  
Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence that 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 lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.”
7. Under section 234 of the *Penal Code* the punishment for one found guilty of grievous harm is imprisonment for life. The convict was sentenced to serve 5 years imprisonment on his own plea of guilty. The trial court has the discretionary power to impose sentence.
8. The victim sustained serious injuries and states he still desires the convict to compensate him despite them not having had an opportunity to mediate as the convict pleaded guilty. He informed the probation officer it has been painful for him every time he has to explain to people what happened to his ear.
9. The report recommends that the convict be committed to a non-custodial sentence for the remainder of the sentence.
10. This court is of the considered view that considering the injuries sustained by the complainant a deterrence sentence was proper in the circumstances. The convict indicates the time he has spent in custody has taught him how to manage anger issues. He states that he is a family man and the family was dependent on him before the arrest and wishes to reunite with them. He is a first-time offender and has been in prison since May 12, 2021.
11. Though the sentence of 5 years imprisonment meted out to the convict is within the law, in the exercise of the powers conferred to this court, I find that the period of 2 years already spent in custody by the convict is sufficient punishment for his crime.



12. This court therefore reviews the sentence herein. The remainder of the prison term is substituted with a non-custodial sentence and the convict will serve eight (8) months of Community Service at Kianjau Primary School.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU**

**THIS 3RD DAY OF AUGUST 2023.**

.....

**P.M. MULWA**

**JUDGE**

**In the presence of:**

Duale – court assistant

Applicant – present(virtually from Kamiti)

Mr. Muriuki - for the Respondent

