



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL REVISION CASE NO. 142 OF 2019**

**CHRISTOPHER MUGUMO NJOROGE .....APPLICANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**RULING**

The applicant **Christopher MugumoNjoro** filed this application on 15.5.2019 seeking basically that this court be pleased to review the sentence meted out on him of 4 years' imprisonment in Makadara, Criminal Case Number 748/2019 (by the Hon. L. Gatheru, Senior Resident Magistrate) on 9.4.2019. In his application, he has pleaded for leniency and asked to be considered for a non-custodial sentence.

The application by the applicant is therefore for revision. Under section 362 of the Criminal Procedure Code;

***“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 corrections, 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.”***

I have carefully considered the record of the lower court i.e Criminal case No. 748/2019, Makadara Chief Magistrate's court. The applicant had been charged with the offence of assault causing actual bodily harm contrary to section 251 of the penal code. This offence attracts a sentence of upto 5 years imprisonment. It is clear from the proceedings that before passing sentence on the applicant (following his own plea of guilty), the trial court called for and obtained a pre-sentencing report on the applicant.

The pre-sentencing report dated 9.4.2019 brought out some of the aggravating circumstances in the case of the applicant. Amongst these were:

- i) That the applicant had at least 3 previous convictions for creating disturbance, house breaking and threatening to kill, earning him terms of 3,2 and 3 years' imprisonment.
- ii) That each time he came out of prison before completing the terms.
- iii) The violent nature of the applicant in this particulars incident and generally.
- iv) The negative attitude of the complainant against applicant being placed on a non-custodial sentence.
- v) The applicant's own parent's negative response towards his being considered for a non-custodial sentence.
- vi) The negative attitude of the local community against any release of the applicant.
- vii) The general negative assessment of the applicant by the probation officer.

The applicant, by the present application, has not shown in any way how the trial magistrate's orders on sentence lacked any correctness, legality or propriety. I see none. There is therefore no reason at all for this court to interfere with or alter in any way the findings of the lower court. The applicant's application filed herein on 15.5.2019, lacking in any merit, must fail. I so find and dismiss the same wholly.

**HON. D. O. OGEMBO**

**JUDGE**

**2.2.2021**

Court:

Ruling read out in court (on-line) in presence of the applicant and Ms. Kibathi for the state.

**HON. D. O. OGEMBO**

**JUDGE**

**2.2.2021**