



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL DIVISION OF THE HIGH COURT

CRIMINAL REVISION NO. 65 OF 2019

REPUBLIC.....APPLICANT

VERSUS

BELO ADAN HASSAN.....RESPONDENT

RULING ON SENTENCE

1. The subject ruling herein, relates to an application by the Applicant for revision of sentence in; the Chief Magistrate's Criminal Case Number; 929 of 2016, meted upon the Respondent.
2. The background facts are that, the Respondent was charged with the offence of; causing grievous harm, contrary to section 234 of the penal code. That, on the 21st day of March, 2016, she assaulted one; Albanus Kioko, and caused him to sustain grievous injury.
3. Upon hearing the case after the Respondent entered a plea of not guilty, the trial court found her guilty and convicted her on that, charge. She was then sentenced to pay a fine of; Kshs 20,000. In default serve three (3) months imprisonment. She was also ordered to pay the complainant medical expenses compensation in the sum of; Kshs 55,000.00. She paid the fine and the compensation and was released.
4. However, the Applicant herein applied for revision of sentence and upon hearing the application, Hon Justice L. Kimaru, vide a ruling delivered on 30th October 2019, allowed the application and set aside the sentence imposed by the trial court, ordered it be substituted with the sentence of this court.
5. However, the learned Hon Judge ordered that, since the Respondent was absent when the application was heard, (though served) warrant of arrest was issued against her for the Respondent to be arraigned in court for the "appropriate sentencing", after the court has considered her mitigation.
6. The warrant of arrest remained in force until, 1st March, 2021, when the respondent was arrested and arraigned in court. The court then ordered that, she be remanded at Langata Women Remand Prison and set the matter for final orders after the original trial file and pre-sentence report are availed.
7. Upon receipt of the original file and the report aforesaid, I have considered the Respondent mitigation from her address to the court on 1st March, 2021 and the pre-sentence report that; she has four small children, to take care of and pleads for leniency. I have however, considered the detailed report made by the Probation Officer on the; circumstances of the offence, the personal history of the Respondent, offender's attitude, and the complainant's sentiments.
8. It is also noteworthy, according to by Dr Maundu's report produced in the trial court, the complainant, suffered a head injury, with x-ray showing that, he sustained a fracture on the right side of the skull behind the right ear and bleeding on the right side of the brain. These were indeed very serious injuries that resulted in the admission and/or treatment of the complainant at both Kenyatta National Hospital and Mama Lucy Hospital.
9. In the ruling of this court, the learned Hon. Judge also observed that, the compensation ordered was not commensurate with the injuries suffered and expenses incurred in respect thereof. Indeed, the complainant's refused to accept the same but unfortunately, his views on the same was not considered.
10. In my considered opinion, I find that, first and foremost, the sentence imposed was extremely lenient; and therefore, it was properly set aside. However, it suffices to note that, the Respondent is not to blame for the same. She did have the power to impose the sentence upon

herself. It is the trial court that imposed the particular sentence for reasons not clear on the record.

11. In fact, the court record shows that, the trial court did not consider sentiments from both parties. The record shows the trial court considered the "mitigation" alone. Similarly, there is no explanation on record, why the trial court ordered for compensation, and the basis for assessment of the same.

12. Secondly, it suffices to note that, the complainant has a right to seek for compensation through a civil suit; where the issue of quantum will be dealt with. This criminal trial cannot effectively deal with that issue. In other words, whatever sentence is imposed herein should take into account the fact that, the complainant is at liberty to seek for damages for injuries suffered.

13. Thirdly, if the Respondent had been given the appropriate sentence when she was sentenced On 28th September, 2018, which is a period of about three (3) years ago, probably, depending on the length of custodial sentence given, she would probably have served the same. Finally, upon release, the Respondent is likely to have psychologically settled that, the matter was over.

14. In conclusion, I note that the Respondent was sentenced to serve life imprisonment. However, following the decision in Francis Karioko Muruatetu & Another Vs Republic, SCK Petition No. 15 and 16 of 2015, the court held that, the minimum mandatory death sentence is unconstitutional. Subsequently, the courts have held that minimum sentences are unconstitutional, and after taking into account the Respondent's mitigation, the factors outlined above, the seriousness of the offence and/or the circumstances of this case, I therefore sentence the Respondent to serve eighteen (18) months imprisonment.

15. This period shall be reduced by a period of about two months that the Respondent was in custody before being released on cash bail by the trial court and subsequent to arrest after revision of sentence. Further, she will thus serve sixteen months imprisonment. The fine the Respondent paid and the compensation paid to the Complainant shall also be returned to her. The right of appeal within 14 days is explained to the Respondent.

16. It is so ordered.

DATED, DELIVERED VIRTUALLY AND SIGNED ON THIS 12TH DAY OF APRIL, 2021

GRACE L. NZIOKA

JUDGE

In the presence of:

Ms Kimaru for the Applicant

Respondent present in person

Edwin- The Court Assistant