



**REPUBLIC OF KENYA**

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

**CRIMINAL REVISION CASE NO. 23 OF 2019**

**FREDRICK MUTHANGUA MALUKI.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**R U L I N G**

1. This file was placed before me following a letter written by **D. M. Mutinda and Company Advocates**. I have been asked to revise the sentence imposed by the trial Court on the grounds that the trial Court did not consider mitigating factors, it should have called for a Probation Officer's Report as the Applicant was a first offender and the trial Magistrate should have exercised discretion and given an option of fine and that the custodial sentence was excessive.

2. It is important to note at the outset that this is the 2<sup>nd</sup> time this file is being placed before me for revision. At the outset the trial Court presided over by **Hon. Munguti** placed the matter before me so that I could satisfy myself of the propriety of the order sentencing the offender to serve a term in jail when the parties had purportedly agreed after he failed to turn up for trial. I rendered myself in my ruling dated the 22<sup>nd</sup> day of **February, 2019** and directed the offender to be committed to prison to serve the term commencing on the 22<sup>nd</sup> day of **February, 2019**.

3. My duty is therefore to satisfy myself of the legality of the sentence passed by the trial Court. **Section 251** of the **Penal Code** provides thus:

***“Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour and is liable to imprisonment for five years.”***

4. The offender herein was charged with a misdemeanour, therefore, when he absconded the trial Court proceeded to determine the matter pursuant to **Section 206** of the **Criminal Procedure Code** as pointed out in my earlier Ruling. Therefore, the Court did not fall into error.

5. Having taken into consideration the conduct of the offender, the sentence meted out which was legal was not excessive.

6. In the premises, the Application lacks merit. Accordingly, it is dismissed.

7. It is so ordered.

**Dated, Signed and Delivered at Kitui this 19<sup>th</sup> day of November, 2019.**

**L. N. MUTENDE**

**JUDGE**