



**REPUBLIC OF KENYA**

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

**CRIMINAL REVISION NO. 101 OF 2018**

REPUBLIC .....APPLICANT

VERSUS

LAWRENCE MUGAMBI .....RESPONDENT

*(From original conviction and sentence in Criminal Case No. 337 of 2017 of the Principal Magistrate's Court at Marimanti)*

**RULING**

1. The office of the Director of Public Prosecution has moved this court under **Sections 362 and 364** of the **Criminal Procedure Code** for review of the sentence meted out against Lawrence Mugambi (the respondent herein) stating that the same was too lenient given the nature of the offence which was grievous harm contrary to **Section 234** of the **Penal Code**.
2. The Respondent herein in response stated that he is a sickly person that is why he was considered for lenient sentence by the trial court.
3. The court called for lower court file pursuant to **Section 362** of the **Criminal Procedure Code** and noted that the Respondent was charged with one Peter Muthini M'Ntaka Mwara for the offence of grievous harm contrary to **Section 234** of the **Penal Code** vide ***Principal Magistrate's Court Marimanti Criminal Case No. 337 of 2017***. The particulars were that on 7<sup>th</sup> June, 2017 at Kithino Tunyai the respondent jointly with a co-accused unlawfully did grievous harm to Murithi Murungi. The respondent and his co-accused denied the offence but upon trial the respondent was found guilty and convicted. He was sentenced to 3 years probation with a warning not to take the law into his own hands again.
4. As observed above, this court called for the lower court's file in order to satisfy itself on the correctness, propriety and the legality of the sentence upon being prompted by the applicant. I have noted going through the proceedings that the complainant's two fingers (a middle and ring finger) were chopped off apart from another injury on the wrist area described by the medical officer (PW3) as extensive. The P3 form tendered in evidence (P.Exhibit 4) classified the injuries suffered by the complainant as "***grievous harm***".
5. There is no dispute that the trial court was alive to the nature of injuries and the fact that the offence committed by the respondent was "***very serious***" as captured in his proceedings on 5<sup>th</sup> April, 2018 when he called for pre-sentencing or probation report on the Respondent. However this court finds that despite the serious nature of the injuries and the fact that the law provides for upto life imprisonment the trial court somehow went ahead and sentenced the respondent to 3 years probation with a warning not to repeat the offence again. That in my view was not proper, regular or an appropriate sentence that can be said to be deterrent enough. The victim of the offence suffered serious injuries which forced him to be admitted for 21 days in hospital which interfered with his studies as per the social inquiry report filed. The 3 years probation sentence handed to the Respondent clearly was not commensurate with the offence which he was charged and the nature of the injuries he inflicted upon the complainant which are permanent because he live with the disability of two missing fingers for the rest of his life.
6. In the premises this court exercises its revisionary powers under **Section 364(1)(a)** of the **Criminal Procedure Code** and sets aside the sentence meted out against the respondent and its place considering the mitigating circumstances he is sentenced to serve seven (7 years imprisonment).

**Dated, signed and delivered at Chuka this 6<sup>th</sup> day of November, 2018.**

**R.K. LIMO**

**JUDGE**

**6/11/2018**

Ruling signed, dated and delivered in open court in presence of Machirah for State/Applicant and Muthomi for Respondent.

**R.K. LIMO**

**JUDGE**

**6/11/2018**