



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM: CHERERE-J)

CRIMINAL REVISION NO. 108 OF 2018

(From original sentence in Criminal Case No. 38 of 2016 in Senior Resident Magistrate's Court at Winam by Hon. J.Mitey (RM) on 23.10.18)

GEOFFREY ODHIAMBO FELIX.....APPLICANT

V E R S U S

REPUBLIC.....RESPONDENT

RULING

1. On 23rd October, 2018, the applicant was sentenced to serve an imprisonment term of 3 years for the offence attempted assault contrary to section 251 of the Penal Code.

Applicant's case

2. This revision is brought by way of an application filed on 31st October, 2018. The application is supported by the applicant's affidavit filed on even date in which he urges the court to order a non-custodial sentence preferably an option of a fine.

Respondent's case

3. Mr. Muia leaned counsel for the state opposed the application. He submitted that the offence the applicant was convicted for attracts a mandatory sentence (*must have meant maximum sentence*) of 5 years. He submitted that after plea was taken and applicant was released on bond, he assaulted the complainant again. He also submitted that the applicant was not a first offender and had been sentenced for a similar offence in **Winam Criminal Case Number 719 of 2016** where he was find Kshs. 20,000/- in default 6 months imprisonment.

4. The powers of the High court in revision cases are contained in Section 362 through to 366 of the Criminal Procedure Code (cap.75). Section 362 specifically provides as follows:-

“362. 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 correctness, 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”.

5. I have perused the record of the Lower court and I did not find any evidence that after the applicant was released on bond, he assaulted the complainant a second time.

6. In sentencing the trial court evidently considered that the applicant was not a first offender since he had previously been convicted and sentenced for a similar offence. From the material placed before the court, it has not been demonstrated that the trial court's discretion was not properly exercised when it sentenced the applicant to an imprisonment term without the option of a fine. It has similarly not been demonstrated that there exists any irregularity, illegality, incorrectness or impropriety of the *proceedings, finding, sentence or order passed by the subordinate court to warrant a revision.*

7. Consequently, the application for revision is considered and found to have no merit and it is disallowed.

DATED AND DELIVERED THIS 6th DAY OF December 2018

T. W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Felix

Applicant - Present

For the State - Mr. Barasa