



**REPUBLIC OF KENYA**

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

**CRIMINAL (REVISION) CASE NO. 15 OF 2015**

REPUBLIC..... APPLICANT

*VERSUS*

PETER GITONGA NYAGA..... ACCUSED

**RULING**

This is an application for revision filed on 15/52015 against sentenced imposed on the applicant in Embu Criminal Case No. 1251 of 2014. The applicant was charged and convicted of the offence of assault causing actual bodily harm contrary to Section 251 of the Penal Code and sentenced to serve 2 years imprisonment. The grounds for revision are stated as follows:-

1. *That the applicant is a first offender and is remorseful.*
2. *That he is the sole breadwinner of his family and his absence from them has affected their well being.*
3. *That he has acquired various skills while under rehabilitation in prison.*
4. *That his alienation from his family for the period has been traumatizing and his family life will be jeopardized if he stays in prison longer.*

The applicant therefore pleads with the court to award him a suspension sentence for the remaining period so that he may continue taking care of his young family and applying the skills he has acquired while in custody.

The counsel for the respondent Ms. Nandwa submitted that the applicant has stated that he is satisfied with the conviction. There is nothing irregular with the sentence meted out for his mitigation was considered when the sentence was being passed. The magistrate noted that the sentence was adequate in view of the circumstances of the offence and would serve as deterrence.

The reasons given for revision are not sufficient. She cited the case ***OF JOSEPH WAWERU VS REPUBLIC [2014] eKLR*** where the court held that the allegation by the applicant that the sentence was too harsh and severe, his illness and the fact that he was willing to refund the stolen money were not sufficient to revise a subordinate court's decision.

The law applicable is Article 165(7) of the Constitution and Section 362 of the Criminal Procedure Code.

Article 165(7) of the Constitution provides:-

*For purposes of clauses(6), the High Court may call for the record of any proceedings before any subordinate court or person, body or person, body or authority.....and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.*

Clause 6 gives the High Court supervisory jurisdiction over all subordinate courts, tribunals exercising a judicial or quasi-judicial function.

Section 362 provides that:-

*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.*

The jurisdiction of this court is not in doubt in view of the above provisions. The applicant is not aggrieved by the conviction and this may be the reason why he opted for a revision as opposed to an appeal. I have looked at the grounds relied on and I find nothing irregular or illegal in the proceedings of the trial court. The applicant has not faulted the trial magistrate for any illegality or irregularity.

The applicant was convicted under Section 251 of the penal code. The section provides that;

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

I have looked at the provisions of Section 251 and note that the sentence imposed was not only lenient but within the law. I find no basis for this court to invoke its powers for revision.

I find no merit in this application and it is accordingly dismissed.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 9TH DAY OF NOVEMBER, 2015.**

**F. MUCHEMI**

**JUDGE**

**In the presence of:-**

**The applicant**

**Ms. Nandwa for respondent**