



REPUBLIC OF KENYA

High Court at Machakos

Criminal Revision 9 of 2013

DOMINIC MUTUA NZIOKA APPLICANT

VERSUS

REPUBLIC RESPONDENT

(Before B. Thuranira Jaden J)
RULING ON REVISION

The Applicant, **Dominic Mutua Nzioka** was charged with the offence of reckless and negligent act causing harm contrary to **section 243 (d)** of the **Penal Code**.

When the Applicant was arraigned before the lower court, he pleaded guilty to the offence. He was convicted and sentenced to pay a fine of Kshs.20,000/= in default to serve three months imprisonment.

The complainant applied for revision vide his letter dated 28/3/2012. The Applicant's complaint is that the sentence is harsh and unlawful.

Section 243 of the **Penal Code** under which the Applicant was charged provides that the offence is a misdemeanour.

A "**misdemeanour**" means any offence which is not a "**felony**".

A "**felony**" means an offence which is punishable with imprisonment for three years or more. (**See Section 4 of the Penal Code**).

Any sentence under **Section 243** of the **Penal Code** which is not more than three years imprisonment is therefore within the law.

The Applicant was fined Kshs.20,000/= in default three months imprisonment. Under **Section 28 (2)** of the **Penal Code**, a fine of Kshs.20,000/= attracts a default sentence of three to six months imprisonment.

The sentence is therefore within the law and is not harsh. Consequently, the application for revision is dismissed.

B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 3rd day of May 2013.

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JUDGE