Hassan v Republic (Miscellaneous Criminal Application E036 of 2025)
[2025] KEHC 14799 (KLR) (23 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14799 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT GARISSA

MISCELLANEOUS CRIMINAL APPLICATION E036 OF 2025

JN ONYIEGO, J

OCTOBER 23, 2025

BETWEEN

FAISAL ABDULLAHI HASSAN ..... APPLICANT

AND

REPUBLIC ..... RESPONDENT

(Being revision application against the sentence of Hon. X. Baraka (RM) dated 28th March 2025 in Wajir PM's court criminal case No. E040 of 2025)

RULING

1. Accused herein was charged with two counts of assault causing actually bodily harm contrary to section 251 of the penal court. Particulars in respect of count I were that, on 31st January 2025 at starman location in Tarbaj Sub-County, within Wajir County, he intentionally assaulted Bishar Hilowlf Alaso by use of Somali sword thereby occasioning him actual bodily harm.

2. In respect to count II, particulars were that, on 31st January 2025, at starman location in Tarbaj Sub-County, within Wajir County, he intentionally assaulted Abdirhaman Idle Muhumed by use of Somali sword thereby occasioning him actual bodily harm.

3. Having denied the charge, the matter proceeded to full trial. At the conclusion of the hearing, he was convicted and subsequently sentenced to serve one and half years imprisonment for each count. That sentences to run consecutively.

4. He has now moved to this court seeking review of his sentence on grounds that; he is a first offender; he is remorseful; he has no pending appeal; he did not give proper mitigation during sentencing; he is a first year student at Garissa teachers training college; he is praying for leniency.

5. Basically, the applicant is seeking revision of his sentence to enable him get out of prison. In response, the respondent opposed the application on grounds that the sentence is legal and appropriate. Counsel however urged the court to consider the period spent in remand custody.

6. I have considered the application herein and the response thereof. The law governing revision in a criminal case is captured under Section 362 and 364 of the CPC. Section 362 and 364 provides as follows;

> " 362. Power of High Court to call for records
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> 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.
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> 364. Powers of High Court on revision
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> (1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may —
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> (a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;
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> (b) in the case of any other order other than an order of acquittal, alter or reverse the order.
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> (c) in proceedings under section 203 or 296(2) of the Panel Code (Cap. 63), the *Prevention of Terrorism Act* (Cap. 59B), the *Narcotic Drugs and Psychotropic Substances (Control) Act* (Cap. 245), the Prevention of Organized Crimes Act (Cap. 59), the *Proceeds of Crime and Anti-Money Laundering Act* (Cap. 59A), the *Sexual Offences Act* (Cap. 63A) and the *Counter-Trafficking in Persons Act* (Cap. 61), where the subordinate court has granted bail to an accused person, and the Director of Public Prosecution has indicated his intention to apply for review of the order of the court, the order of the subordinate court may be stayed for a period not exceeding fourteen days pending the filing of the application for review.

(2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence:

> Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.

(3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.

(4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.

(5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.

7. It is clear from the above provisions that an application for review of sentence can be entertained only for purposes of the court satisfying itself as to the correctness, legality or propriety of the proceedings. Section 364(5) of the CPC is emphatic that no application for revision should be entertained where an appeal lies from a sentence or order. This position was espoused in Criminal Revision number 194 of 2023 Kisii High court in the case of Barongo Sianyo Atembe vs Republic.

8. From the record, the court is merely being asked to exercise mercy on the applicant. He is not appealing against sentence nor conviction. It trite law that sentencing is at the discretion of the court and an appellate court can only interfere if the same is illegal harsh or excessive or the trial court failed to take into account relevant factors or considered wrong legal principles. The position was stated succinctly by the Court of Appeal for East Africa in the case of Ogola s/o Owoura Vs Reginum (1954) 21 270 as follows:-

> " The principles upon which an Appellate Court will act in exercising its jurisdiction to review sentences are firmly established. The Court does not alter a sentence on the mere ground tha t if the members of the Court had been trying the appellant they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial Judge unless, as was said in James V R., (1950) 18 E.A.C.A 147:
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> > "It is evident that the Judge has acted upon some wrong principle or overlooked some material factor."
>
> To this we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case: R. V Sher shewky, (1912) C.C.A. 28 T.L.R. 364."

9. In my opinion and taking into account the seriousness of the offence committed, the sentence imposed is not excessive nor harsh. The trial court properly exercised its discretion hence I have no reason to interfere. As to the period spent in remand custody under Section 333(2) of the CPC, the same was

taken care of by the trial court. In a nut shell, I do not have any good ground to interfere with the sentence. Accordingly, the application is dismissed.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 23RD DAY OF OCTOBER 2025

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J. N. ONYIEGO

JUDGE