



**Musembi v Republic (Criminal Revision E073 of 2024)
[2025] KEHC 1961 (KLR) (25 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1961 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION E073 OF 2024
DR KAVEDZA, J
FEBRUARY 25, 2025**

BETWEEN

SHARON MAWIA MUSEMBI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offences of assault causing actual bodily harm contrary to Section 251 of the Penal Code, malicious damage to property contrary to Section 339 of the Penal Code, and offensive conduct contrary to Section 94(1) of the Penal Code. Following a full trial, she was convicted and sentenced as follows:

for assault causing actual bodily harm, a fine of Kshs. 30,000, or in default, five months' imprisonment; for malicious damage to property, a fine of Kshs. 20,000, or in default, three months' imprisonment; and for offensive conduct, a fine of Kshs. 5,000, or in default, one month's imprisonment.
2. She has now filed the present notice of motion application before this court dated 22nd October 2024 seeking a review of the sentence imposed by the trial court.
3. The applicant argues that Section 4(b) of the Probation of Offenders Act should be read in a manner that complies with the United Nations Minimum Rules for Non-Custodial Measures (The Tokyo Rules) paragraph 2.1, which provides for the scope of non-custodial sentences measures to apply to all persons at all stages of administration of justice. She further argues that the time spent in custody has been sufficient rehabilitation hence she prays for a non-custodial sentence.
4. I have carefully considered the application, the affidavit filed by the applicant in support thereof, and the relevant legal provisions applicable to this matter. Upon reviewing the record, it is evident that the trial court imposed the sentence after duly considering the applicant's mitigation, the pre-sentence



report, and the fact that she was a first offender. The court exercised its discretion within the confines of the law, ensuring that the sentence imposed was appropriate and proportionate.

5. For the foregoing reasons, the application is found to be lacking in merit and is dismissed.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 25TH DAY OF FEBRUARY 2025

D. KAVEDZA

JUDGE

