



**Okemwa v Republic (Miscellaneous Criminal Revision
E008 of 2025) [2025] KEHC 9770 (KLR) (25 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9770 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
MISCELLANEOUS CRIMINAL REVISION E008 OF 2025**

TA ODERA, J

JUNE 25, 2025

BETWEEN

JOSEPHINE KERUBO OKEMWA APPLICANT

AND

REPUBLIC RESPONDENT

*(Being sentence review arising from original Criminal Case
No. E884 of 2025 at Ogembo Magistrate court of 2025)*

RULING

background

1. The applicant vide a Notice of motion dated under section 123, 124, 362 and 364 of the [Criminal Procedure Code](#) and Articles 25c, 49(1)(h), 50(1), 165(6) & (7) and 259(1) of the [Constitution](#) of Kenya and sought for Orders that;
 1. Spent
 2. This honourable court do exercise its discretion in the revision of the conviction and sentence by the honourable P.C. Biwott (Chief Magistrate) made on the 25th April 2025, wherein the said Magistrate convicted the Applicant to pay a fine of 50,000 or serve 2 years imprisonment.
 3. The costs of this Application be in the cause.
2. The revision is based on the following grounds;
 1. The Applicant herein was charged and convicted before the Honourable Trial Magistrate court at Ogembo Vide CMCCR E884 of 2024 for the offences of Causing Grievous Harm contrary to section 231 as read with section 234 of the [Penal Code](#) Laws of Kenya, wherein the applicant was convicted to pay a fine of Kshs 50,000/= or serve (2) years imprisonment.



2. The applicant is old, was a first offender and very very remorseful.
3. The Applicant is now in custody and may remain in custody for long if the prayers for revision sought by the applicant are not granted.
4. The Applicant has a medical chest condition, and his continued stay in custody may aggravate the situation.
5. The Applicant has undertaken to abide by any condition that this court will set forth.

Revision

6. Section 362 of the [Criminal Procedure Code](#) provides as follows: -

The High Court may call for and examine the record of any criminal proceedings before a 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. Emphasis mine

7. Section 364 of the [Criminal Procedure Code](#) provides thus: -

364. Powers of High Court on revision

- (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-
 - (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;
 - (b) In the case of any other order other than an order of acquittal, alter or reverse the order.
 - (c) in proceedings under section 203 or 296[2] of the [Penal Code](#), the [Prevention of Terrorism Act](#), the [Narcotic Drugs and Psychotropic Substances \[Control\] Act](#), the [Prevention of Organized Crimes Act](#), the [Proceeds of Crime and Anti-Money Laundering Act](#), the [Sexual Offences Act](#) and the [Counter-Trafficking in Persons Act](#), where the subordinate court has granted bail to an accused person, and the Director of Public Prosecutions 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. Emphasis mine

8. I note that the appellant was charged under section 234 of the [Penal Code](#). For the appellant to be convicted of the offence of causing grievous harm c/s 231 as read with section 234 of The [Penal Code](#), the prosecution had to prove each of the following essential ingredients beyond reasonable doubt;

- i The victim sustained grievous harm.



- ii. The harm was caused unlawfully.
 - iii. The accused caused or participated in causing the grievous harm.
9. Concerning the first element, bodily “harm” means any bodily hurt, disease or disorder whether permanent or temporary. The nature of grievous harm is defined by section 4 of the *Penal Code* as any harm which amounts to a main or dangerous harm or seriously or permanently injures health or which is likely so to injure health, or which extends to permanent disfigurement or to a permanent or serious injury to any external or internal organ, membrane or sense.
10. The specificities of “grievous harm” therefore are;
- (1) in the case of grievous harm, the injury to health must be permanent or likely to be permanent, whereas, to amount to bodily harm, the injury to health need not be permanent;
 - (2) A mental injury may amount to grievous harm but not to bodily harm;
 - (3) The injury must be “of such a nature as to cause or be likely to cause” permanent injury to health.

Regarding sentence, Majanja J, quoting the case of *Francis Karioko Muruatetu & another v Republic* [2017] eKLR), in the case of *Michael Katbewa Laichena & another v Republic* (2018) eKLR, stated as follows:

“The *Sentencing Policy Guidelines*, 2016 (“the Guidelines”) published by the Kenya Judiciary provide a four-tier methodology for determination of a custodial sentence. The starting point is establishing the custodial sentence under the applicable statute. Second, consider the mitigating circumstances or circumstances that would lessen the term of the custodial sentence. Third, aggravating circumstances that will go to increase the sentence. Fourth, weigh both aggravating and mitigating circumstances. Since the Guidelines did not take into account the fact that the death penalty would be declared unconstitutional, the Court in the *Muruatetu Case* (Supra, para. 71), considered that in re-sentencing in a case of murder, the following mitigating factors would be applicable;

- (a) age of the offender;
- (b) being a first offender;
- (c) whether the offender pleaded guilty;
- (d) character and record of the offender;
- (e) commission of the offence in response to gender-based violence;
- (f) remorsefulness of the offender;
- (g) the possibility of reform and social re-adaptation of the offender;
- (h) any other factor that the Court considers relevant.

11. I have noted that the Appellant was sentenced on 25th April 2025 and she was remorseful at the time, she has approached this court after 54 days to revise the decision of the lower court.



12. It is trite law that the revisionary power of the High Court is not meant to be invoked to micro-manage the subordinate Courts. In respect to this caution, in the same case of *Joseph Nduvi Mbuvi v Republic (supra)*, Odunga J stated further as follows:

“14. It is, however my view that the jurisdiction should not be invoked so as to micro-manage the Lower Courts in the conduct and management of their proceedings.....”

13. The Trial court in its judgement considered the Mitigation that the offender was remorseful and that she was the Aggressor in the scenario, she was not provoked at all and that she provoked the complainant by uprooting her vegetable. In the instant case, it was the testimony of PW4 that the complainant had sustained injuries that her left ear was bitten off by the applicant. The injury was serious.

14. Considering the nature of the offence and circumstances of the case, I find that the fine of Kshs 50,000/= was not excessive or two years imprisonment in default

15. For the foregoing reasons, I find no reason to warrant any interference by this Court over the sentence imposed by the trial Court or to merit the exercise of this Court’s power of revision.

16. The revision has no merit and I proceed to dismiss it.

DELIVERED VIRTUALLY VIA TEAM PLATFORM ON THIS 25TH DAY OF JUNE 2025 IN THE PRESENCE OF:

T.A ODERA

JUDGE

25. 6.25

The Applicant

Mr. Koima for the State

Court Assistant - Kipchirchir

