



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT SIAYA**

**CRIMINAL REVISION NO. 3 OF 2022**

**(ORIGINATING FROM BUSIA CRIMINAL REVIEW NO. E001/2022)**

**JACIM OMONDI OGOLLA.....ACCUSED**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**(Being an Application arising from the Judgment, conviction and sentence in Busia**

**Chief Magistrate's Court Criminal Case No. 523 of 2017 delivered**

**by Hon. Lucy Ambasi on 5<sup>th</sup> January 2022)**

**RULING**

1. I have heard the Applicant/Convict and perused the application under Certificate of Urgency, seeking to be heard during the recess and for revision of the custodial sentence of one-year imprisonment imposed on him on 5/1/2022 under **Busia CM Cr. Case No. 523B of 2017**.
2. The case is old and this court's antennae are raised on why such a simple assault case delayed in court from 2017 to 2022 for it to be concluded yet from the Judgement delivered on 5/1/2022, the proceedings were not much.
3. Further, I observe that the applicant convict swore an affidavit claiming he is a High School teacher at Nanderema Secondary School, employed by the Board of Management and that if he remains in custody, he stands to lose his employment to the detriment of his children who depend on him solely as his wife left him. The court has asked the convict who is self-represented and he concedes that the affidavit as sworn is false. He informs the court that he is a cook and not a teacher and that it was his brother who prepared for him the false affidavit.
4. In view of the above, the court cannot trust the Applicant's word as he appears to be a liar and unreliable.
5. The convict wanted to take advantage of the recess to abuse the discretion of this court. Had this court not ordered that he be presented virtually, it could have been misled into making orders that were founded on falsehoods.
6. For the above reason, I decline to exercise discretion in revision. The sentence imposed is lawful. The case went on to full trial. The sentence is not excessive as the maximum provided for in law is five years imprisonment, upon conviction for assault.
7. At this stage, this court cannot go on its own frolic to fact find for a person who is untruthful and dishonest following his swearing of a false affidavit. It may well be false that he works in a public or other institution as no document was annexed in the form of a letter of appointment.
8. The application for sentence revision is declined and dismissed.
9. File closed and proceedings and Ruling hereto typed and remitted to Busia High Court forthwith.
10. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT SIAYA THIS 7<sup>TH</sup> DAY OF JANUARY, 2022**

**R.E. ABURILI**

**JUDGE**