



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT SIAYA**

**CRIMINAL REVISION E010 OF 2021**

**FELIX OCHIENG OPONDO.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

***(Application for sentence revision from the judgment, conviction and sentence in SIAYA P.M'S MAGISTRATES COURT NO. E004 of 2021 on 10.2.2021 by Hon. J.O. Ong'ondo – Senior Principal Magistrate)***

**RULING**

1. The Convict Felix Ochieng Opondo was convicted on his own unequivocal plea of guilty of the offence of stealing stock contrary section 278 of the Penal Code as read with section 268(1) of the Penal Code. He was sentenced to serve one (1) year imprisonment on 10.2.2021 by Hon. J. Ong'ondo, Senior Principal Magistrate. He has not challenged his conviction or sentence.

2. The file is before me for prison decongestion by way of sentence Revision. I have perused the proceedings before the trial court. The cow stolen was recovered. It was valued at KShs.35,000/=. Before sentencing, the trial court ordered for a presentence Report and remarked that because the accused had readily admitted committing the offence, he had intended to impose on him a non-custodial sentence but the probation report stated that the offender was a flight risk as he has no fixed abode and was forever on the move with no family which can tie him down to one particular place hence unsuitable for non-custodial offence. The probation officer who prepared presentence report is David O. Odumba. This was on 18.1.2021.

3. In support of these proceedings is a probation officer's report signed by Rhoda Wanyonyi. It is filed in court on 11.6.2021. In the said Report which is quite scanty, the officer recommends non-custodial sentence of Community Service Order at Ambira Sub-County Hospital under the supervision of Ministry of Health. She reports that he has no house and has been living with his cousins. That while in prison, he has not engaged in any life's skills and neither has he been engaged in counselling. He claims that he needed money to travel to Naivasha where he had found a job opportunity hence the theft of a cow to get enough money to cater for his living expenses as he did not want to stay at a friend's house.

4. This kind of a person is in dire need of rehabilitation and reformation. He cannot reform through Community Service Order despite his admission of the offence, until he learns life's lessons of respect for other people's property. Prison is the best place for him to learn such skills. He was given very light sentence. I find no reason why I should interfere with such lenient/lawful sentence as the convict's situation has not changed and neither does the offence with which he was charged carry up to 3 years imprisonment as contemplated under Section 3(1) of the Community Service Order Act, to warrant him being placed on Community Service Order.

5. Accordingly, I decline to revise the sentence imposed and order the convict to serve full sentence and learn life's skills in prison and be rehabilitated.

6. File closed.

7. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT SIAYA THIS 28<sup>TH</sup> DAY OF JUNE, 2021**

**R. E. ABURILI**

**JUDGE**