



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT SIAYA**

**CRIMINAL REVISION CASE NO. E040 OF 2021**

**GEORGE ODUOR OTIENO.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

***(Revision Application for sentence revision in Bondo PM's Magistrates Court***

***Cr Case No. 354 OF 2020 on 15.12.2020 by Hon. J.P. Nandi – Principal Magistrate)***

**RULING**

1. The Applicant/Convict George Oduor Otieno was convicted of the offences of Burglary **and Stealing Contrary to Section 304(1)(b) and Stealing Contrary to Section 279(b) of the Penal Code**. This was after a full trial before Hon. Nandi, Principal Magistrate Bondo Law Courts.

2. The offence occurred on 30.5.2020 at 1400 hours at Atilili Village, Barkowino Sub-Location, Bondo Township Location in Bondo Sub-County of Siaya County. Particulars being that on the said date and time, the convict herein entered into the building used as a dwelling house by Naman Manguro Ayieta and stole one steel gate one wheel barrow, one spade, one ceiling board, one electric cable, customer intercess unit and assorted plumbing materials all valued at KShs. 61,000 the property of Naman Manguro Ayieta.

3. Upon being found guilty of the offence after a full trial, the trial magistrate ordered for a presentence report which was filed and dated 15.12.2019 by Tinega Nyariki, Probation Officer. On being interviewed by the Probation Officer, the Convict readily admitted committing the offence saying he was desperate for money after his mother chased him away.

4. The community revealed that the offender had been a nuisance in the village as he had been involved in Petty Crimes for a long period. Further that he smoked bhang and abused alcohol. The home was said to be unconducive for rehabilitation hence non-custodial sentence was not recommended. His mother was said to be unwilling to take back the Offender due to his nuisance character to the family and the community at large. The community was not ready to take the offender back as he was wayward.

5. The Probation Officer concluded that the offender required psychological counseling on the effects of alcohol and drugs abuse and being advised on the need to respect and uphold the rule of law. He had nonetheless accepted his mistakes and was willing to reform.

6. The Offender was then sentenced to serve three years, imprisonment for Burglary and three years' Imprisonment for Stealing, sentences to run concurrently. This was on 15.12.2020. The Offender has therefore served six months imprisonment of the 3 years concurrent imprisonment meted out.

7. In the current Probation Officer's Report in support of the sentence revision report as the Convict never appealed, according to Ms. Euphemia Kidwoli Probation Officer, Bondo, who interviewed the offender and as per her report filed in this Court on 11.6.2021, the Convict who is 29 years old is from a broken family. His mother lives in Bungoma and is a teacher while his father lives in Nyamonye with a second life. The sibling are educated unlike him who attained a D grade and has not acquired any training. He appears to be a lone ranger and outlier in the family. He previously worked as a security guard in Qatar. He is single and has no health issues. He readily accepts committing the offence to fend for himself. He has undergone counselling and rehabilitation in prison. He engages in farming in prison custody. The community is willing to accept him back if only he does not engage in criminal activities. The family is said to be engaging with him on phone. He is also said to be willing to perform community service, and that the victim forgave him.

8. I observe that the Offender did not plead guilty to the charges. He however admitted to the Probation Officers that he committed the offences to fend for himself as he had no food. His parents who are separated stay a distant apart. He lived on his own.

9. There is no indication that the latter Probation Officer who interviewed the Offender ever referred to the former report by Mr. Nyariki or that she ever called or interviewed his mother or father or siblings who appear to be well to do. It is also not clear if the offender, if released on Community Service Order, will find a conducive environment to live in so as to aid him in rehabilitation since he is unemployed and there is no mention of what kind of social support his family will give him in the process of rehabilitating him if he was to be placed on unpaid Community Service Orders, noting that he partakes of drugs and alcohol. For the above reasons, I decline to accept the recommendation for Community Service Order.

10. I further decline to revise the custodial sentence imposed on the convict and Order that he serves and completes the prison term imposed on him so that he is fully rehabilitated and reformed. He can learn life's skills while in prison so that when he completes sentence, he can engage in meaningful activities.

11. Orders accordingly.

12. File closed.

**DATED, SIGNED AND DELIVERED AT SIAYA THIS 25<sup>TH</sup> DAY OF JUNE, 2021**

**R. E. ABURILI**

**JUDGE**