

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CRIMINAL REVISION NO. E048 OF 2021

CORAM: R.E. ABURILI, J

LUCAS OTIENO ONYANGO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Application for Revision of sentence against sentence in Ukwala SRM Court's Criminal Case No. 135 of 2021 on 09.03.2021 by Hon. C. I. Agutu, Senior Resident Magistrate)

RULING

1. The accused Lucas Otiemo Onyango was charged with the offence of stealing one hen valued at Kshs. 500/= the property of Ligina Ochieng (his mother) on 5th March 2021 at Mukweso Village, East Ugenya Location in Ugenya Sub county within Siaya County.
2. He also faced count two of being found in possession of 3 rolls of narcotic drugs - cannabis sativa valued at Kshs. 30/= and which was not medically prescribed.
3. He is alleged to have pleaded guilty to the charges when he appeared for Plea before Hon. C.I. Agutu, Senior Resident Magistrate on 9/3/2021.
4. However, the trial court record of proceedings are in my humble view, irregular and fatally defective. There was no Plea of guilty entered and neither is there any conviction of the accused on record before he was sentenced to serve 2 years imprisonment on count 2 and forgiven on count one of stealing a hen.
5. That being the case, I hereby quash the proceedings of 9/3/2021 conducted by Hon. C.I. Agutu, Senior Resident Magistrate, UKwala and set aside the sentence imposed on the applicant Lucas Otiemo Onyango, which sentence was not anchored on any conviction.
6. Accordingly, unless otherwise lawfully held, Lucas Otiemo Onyango is hereby set at liberty forthwith. File closed.
7. Ruling and lower court file to be returned to Ukwala Principal Magistrates' court and this ruling shall be served upon Hon. C.I. Agutu, Senior Resident Magistrate for noting.

Dated, signed and Delivered at Siaya this 24th Day of June, 2021

R.E. ABURILI

JUDGE