

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL REVISION E036 OF 2021

STEPHEN ONYANGO ONG'ONGAAPPELLANT

VERSUS

REPUBLIC..... RESPONDENT

(Being an Application for Revision of sentence in Bondo PMCCRC E163 of 2021 on 2.3.2021 by Hon. S.W.Mathenge, Senior Resident Magistrate)

RULING ON REVISION

1. The Convict/Applicant is **Stephen Onyango Ongonga**. He was charged and convicted of the offence of **Grievous Harm Contrary to Section 234 of the Penal Code** particulars are that as 24.1.2021 at 2030 hours at Mahaya sub-Location in Rarieda sub-county, within Siaya County he did Grievous Harm to Bernard Ochieng Onyango.

2. The victim is a child aged 6 years old. The convict pleaded guilty to the charge on 2.2.2021. The plea, from the court record, taken by Hon. S. Mathenge Senior Resident Magistrate, Bondo, was unequivocal. The convict is aged 35 years old. He was convicted on his own unequivocal plea of guilty and sentenced to serve 12 years imprisonment. He has not appealed against conviction or sentence. The maximum sentence for grievous harm is up to life imprisonment. I have seen the P3 form for the complainant minor and the photographs taken of the minor. They are graphic, showing a punctured stitched head and face. He sustained cut wounds on the head, right mandibles and right scapula which were all stitched. The minor was the Convict's son. The Convict used a panga to inflict injuries to the minor. That panga is the one he was using to chase the Victim's mother who is the Convict's wife. When the Convict failed to catch up with his wife whom he wanted to cut using the panga, he landed on the innocent child and cut him seriously.

3. In mitigation he said he was an orphan, prayed for forgiveness and was mad at and fighting with his wife. The trial court called for a Presentence Report which was never filed. I have perused the Probation Officer's Report filed on 15.6.2021 by Mr. Milton Kasera, Probation Officer. The Convict is described as a violent person who beats his wife frequently and on the fateful day, he was assaulting her and when she escaped, he turned his anger on the minor child and repeatedly cut him with a panga almost killing him. His family members are unwilling to have him back at home because of his violence. He is a danger to the society at large. He is likely to be a psychopath. He is unemotional and morally deprived. He has no feelings for other people and is likely to re-offend.

4. The Probation Officer does not recommend for a non-custodial sentence. Having considered all the above report of the Probation Officer and circumstances of the offence and the provision of **Section 3 of the Community Service Orders Act**, I am not persuaded that there is any legality or legitimacy or merit in this application for sentence revision which is hereby declined and dismissed. Applicant/Convict to serve his lawful and lenient full prison term as imposed by the trial Court.

5. File closed.

6. Orders accordingly.

Dated, Signed and Delivered at Siaya this 24th day of June, 2021

R.E. ABURILI

JUDGE