



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL APPEAL CASE 240 OF 2019

RUSTUS OTIENO ARUMAPPELLANT

VERSUS

REPUBLICRESPONDENT

RULING

This matter is coming up now for application of the applicant **RUSTUS OTIENO ARUM**, dated 30.11.2020. The application, brought under Articles 159 and 165 of the constitution seeks revision of the sentence of the lower court and an order that same be reduced to the period already served. Attached to the application is an affidavit of the applicant in which the applicant has deponed on his having reformed.

Counsel for the applicant, Mr. Oduor, in his submissions merely relied on the affidavit in support of the application.

In response to the application, Ms. Kibathi, for the state, submitted that the application be allowed to the extent that there exists an error in the sentence of the lower court. That on court I, the applicant had been sentenced to a fine of Ksh.600,000/= or in default to serve 3 years imprisonment, whereas, the default sentence ought to have been under section 28(2) of the Penal Code which stipulates for a maximum of 12 months imprisonment.

I have considered the application and the submissions of the 2 learned counsel. The application seems to target the default sentence to count I, ie the sentence of 3 years imprisonment.

The state Respondent has conceded to this application. Article 165 of the constitution declares the powers of revision that the High Court retains over the subordinate courts. The enabling procedural statute, the Criminal Procedure Code, Cap 75, at section 364, also gives directions as to the nature of the orders that the High Court may issue.

At section 364(1)(b)

“in the case of any order other than an order of acquittal, alter or reverse the order.”

In view of the fact that the prosecution is not opposed to this application, I allow the same. I accordingly revise the sentence of the applicant to the period already served. The applicant to be released forthwith unless lawfully.

D. O. OGEMBO

JUDGE

28.7.2021.

Court:

Ruling read out in presence of the applicant (Nairobi West Prison), Mr. Oduor for the applicant and Mr. Kiragu for the state.

D. O. OGEMBO

JUDGE

28.7.2021.

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FROM: HIGH COURT APPELLATE SIDE

TO: G.K. NAIROBI WEST PRISON @ GK.PRISON ALLO.

INFO: PHQ.

28TH JULY 2021

HCCRA 240 OF 2019

HIGH COURT CRIMINAL REVISION NO. **240** OF **2019** ORIGINATING FROM THE CHIEF MAGISTRATE'S COURT AT MILIMANI CRIMINAL CASE NO. 1146 OF 2018. APPLICANT'S **RUSTUS OTIENO ARUM** THE SENTENCE OF THE APPELLANT IS REVISED TO THE PERIOD ALREADY SERVED. THE APPLICANT TO BE RELEASED FORTHWITH UNLESS LAWFULLY. IT IS SO ORDERED.

DEPUTY REGISTRAR

stl