

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL APPEAL NO. 68 OF 2018

FREDRICK ODHIAMBO WERE APPELLANT

VERSUS

REPUBLIC RESPONDENT

(Appeal against sentence in Ukwala SRM Cr (SO) Case No 33 of 2018 by Hon G. Adhiambo, SRM)

RULING ON SENTENCE

1. On 29th January 2020 the appellant appeared before this court for the hearing of his appeal challenging both conviction and sentence. However, he applied to have the appeal against conviction withdrawn and the court allowed the application, effectively wholly withdrawing the appellant's appeal against conviction. The appellant urged the court to only consider reduction of sentence imposed on him. This court then ordered for a social inquiry report on the appellant to guide on resentencing, which report was filed by the probation officer on 24th February 2020.

2. I have considered the Appellant's mitigations and the Social Inquiry Report dated 21.2.2020 on the Appellant.

3. I have also considered the fears expressed by the complainant and the fact that the Appellant withdrew his appeal against conviction and is remorseful for the offence.

4. The Social Inquiry Report is not in favour of a non-custodial sentence as this will cause the Complainant more trauma as she threatens to flee the home. Nonetheless, the purpose of the Social Inquiry Report was not for purposes of granting a non-custodial sentence but to guide this Court in resentencing the Appellant who was sentenced to serve mandatory minimum sentence.

5. Having considered the mitigations by the appellant and the concerns by the complainant and the seriousness of the offence, I hereby set aside the 15 years mandatory Prison term imposed on the Appellant and substitute it with a prison term of 8 years imprisonment to be calculated from the date of his arrest on 17.8.2018.

6. Orders accordingly.

Dated, Signed and Delivered at Siaya this 25th day of February, 2020.

R.E. ABURILI

JUDGE