



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CRIMINAL REVISION NO. 51 OF 2020

(CORAM: R. E. ABURILI - J.)

VICTOR OBONTO OKELLO.....1ST APPLICANT

DALMAS OJODO ORWA.....2ND APPLICANT

JAMES OCHOPOLI ODHACH.....3RD APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Application for Revision of sentence vide Criminal Case No. 2 of 2020 in the Principal Magistrate's Court, Bondo dated 2.1.2020 before Hon. S.W. Mathenge, RM)

RULING

1. The 3 prisoners herein **Victor Obonyo Okello, Dalmas Ojodo Orwa and James Ochopoli Odhach** were each convicted and sentenced to serve six (6) months imprisonment for the offence of assault causing actual bodily harm contrary to **Section 251 of the Penal Code**.
2. The conviction and sentences imposed followed the convicts' own plea of guilty, which plea I have examined and found to be unequivocal. This was on 2.1.2020 by Hon. S.W. Mathenge, RM Bondo in **Bondo PM Cr. Case No. 2 of 2020**. The convicts have so far served about three (3) months of the six months imprisonment imposed on them.
3. The convicts have not appealed against conviction or sentence. They are currently serving their respective sentences at Kibos Medium Prison.
4. The Officer Incharge of the said prison has written to court vide letter dated 30/3/2020 attaching prisoner's personal character, discipline and conduct report showing that the convicts/prisoners are of good conduct. They have no record of offense against Prisons Rules and Discipline. In addition, it is stated that the prisoners have learnt their lessons in prison and are very remorseful of the offence committed. In the view of the Officer In charge, SSP Emmanuel O. Odhiambo, the 3 prisoners have reformed and ready to start a new life given a second chance in the society. That they are youthful (aged between 21 and 22 years old) and energetic thus can serve the nation better out of the prison. The Officer In charge of Prison recommends for release of the convicts to serve non-custodial sentences.
5. I have perused the trial court record. The P3 form and treatment notes for the complainant who sustained injuries classified as harm show that the Complainant Joshua Ogolla Okello was aged 23 years, an age mate of the convicts. The motive for the assault which took place at 8pm on 8/12/2019 is not known.
6. In mitigation, the 1st convict said nothing whereas the 2nd and 3rd convicts said:

“it is my first offence. I pray for forgiveness.”

7. The Prosecution indicated that they had no records of previous offence(s) if any. Due to restrictions caused by COVID-19 pandemic, this court is unable to obtain a social inquiry report on the convicts as probation officers cannot access prisons and or visit homes to interview the convicts and or other significant persons of interest in the matter including obtaining a Victim Impact Statement. The injuries were however not serious.

8. For the above reasons, I find that there is sufficient cause to revise the convicts' short prison terms in the spirit of prison decongestion. I hereby revise the prison terms of six (6) months imprisonment imposed on the convicts **Victor Obonyo Okello, Dalmas Ojodo Orwa and James Ochopolo Odhach**. I order that the remainder of their prison terms shall be suspended forthwith and unless otherwise lawfully held, the convicts herein **Victor Obonyo Okello, Dalmas Ojodo Orwa and James Ochopolo Odhach** shall be released from prison to serve suspended sentence.

9. Upon such release, they are ordered to report to the OCS, Aram Police Station every 1st Friday of the month starting 3rd April 2020 until their suspended sentence is completed. They are also warned not to commit any offence for the next one year, breach of which they shall be recommitted.

10. Orders accordingly.

Dated, signed and Delivered at Siaya, this 30th Day of March 2020.

R.E. ABURILI

JUDGE