

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CRIMINAL REVISION NO. 37 OF 2020

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

JOSEPH OMONDI OWINO....APPLICANT

VERSUS

REPUBLIC..... RESPONDENT

(Being an Application for revision of sentence vide Senior Resident Magistrate's Court, Ukwala Criminal Case No. 434 of 2019 dated 14.10.2019 before Hon. C.N. Sindani, Senior Resident Magistrate)

RULING

1. The convict **Joseph Omondi Owino** was convicted on his own plea of guilty and sentenced to a fine of Kshs. 100,000/= in default to serve one year imprisonment on each of the two counts of being found in possession of 30 grams of bhang and cultivating 12 trees (plants of cannabis sativa). The one year imprisonment is concurrent sentence rendered on each of the two counts. The sentence is lawful. In mitigation, he stated that he prayed for forgiveness as he has children.
2. There was no record to show that he was a habitual offender although cultivation of the narcotics is a serious offence.
3. Nonetheless, following his mitigation, the trial court should have called for a probation report to guide in meting out appropriate sentence.
4. The convict was granted bail pending trial but he could not afford the same even after the bond terms were revised downwards. He was arrested on 17/7/2019 and as the exhibits had not be taken to the government chemist for analysts to determine whether they were narcotics, the sentencing was done on 14/10/2019 which was about three months after arrest. He has now been in prison for about 8 months inclusive of the period served in remand.
5. The convict has served substantial part of the one year prisons term. He can benefit from prison decongestions. I therefore exercise judicial discretion and order that the convict **Joseph Omondi Owino** shall serve the remainder of the prison term on suspended sentence and warned not to reoffend or commit any other offence within the next six months from the date of release breach of which he shall be send back to prison to complete the prison term.
6. Orders accordingly.

Dated, signed and delivered at Siaya, this 19th Day of March 2020.

R.E. ABURILI

JUDGE