

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CRIMINAL REVISION NO. 30 OF 2020

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

JOSHUA ODUOR.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Application for revision of sentence vide Principal Magistrate's Court, Bondo Criminal Case No. 1 of 2020 dated 2.1.2019 before Hon. S.W. Mathenge, Resident Magistrate)

RULING

1. On 2/1/2020, the convict was convicted of two counts of assault causing actual bodily harm, contrary to **Section 251 of the Penal Code** after he pleaded guilty. He was sentenced to serve six months imprisonment, on each count, sentences to run concurrently. He has not appealed. The facts disclosed rivalry between two groups of fishermen each claiming fishing territory rights. The convict is a first offender and pleaded for leniency saying he has small children.
2. He assaulted two complainants. He has already served 2½ months of the six months imprisonment and is remaining with about 3½ months to complete sentence. The injuries sustained by the 2 complainants were harm as per the P3 forms produced by the prosecution.
3. No probation report was called for. I have considered the request for sentence revision in the spirit of prison decongestion. I could have called for a social inquiry report on the convict but owing to the COVID -19 virus spread, and the necessary restrictions imposed by the state machinery, the Probation Officers are unable to access the prisons or homes to interview inmates and the significant persons of interest in the case.
4. However, upon request, the Officer In charge Siaya G.K Prison has availed a report on the convict's general conduct and character while in prison, which report is positive.
5. In the premises, I exercise judicial discretion and order that the remainder of the prison term imposed on the convict shall be suspended and therefore unless otherwise lawfully held, the convict **Joshua Oduor be and is hereby** released from prison with a warning not to reoffend for the next 6 months in breath thereof he shall be recommitted to prison to complete sentence.
6. Orders accordingly

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

R.E. ABURILI

JUDGE