

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL REVISION NO. 35 OF 2020

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

LUCAS ODHIAMBO OCHIENG.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Application for revision of sentence vide Senior Resident Magistrate's Court, Ukwala Criminal Case No. 260 of 2019 dated 20.8.2020 before Hon. C.N. Sindani, Senior Resident Magistrate)

RULING

1. The convict in this Revision case is **LUCAS ODHIAMBO OCHIENG** a 57 year old husband to the Complainant Rosemary Atieno. Together, they are blessed with 6 children who have ran away from home because of the cruelty, arrogance and indifference of their father the accused/convict. He was convicted after a full trial for assault causing actual bodily harm and sentenced to serve one year imprisonment on 20/8/2019.
2. When he first appeared for plea before Ukwala SRM's court for plea, he pleaded not guilty and requested the court to allow the matter be resolved at home meaning he considered the issue to be purely of domestic or family nature.
3. The Pre-bail Report dated 10/7/2019 by the Probation Officer reveals that the home environment was not conducive for the accused then, to be released on bail pending trial despite the fact that he has blood pressure.
4. The convict is portrayed to be an arrogant loner who derives pleasure in having constant conflicts with his wife. He has no community ties as a result of his arrogant nature. His wife and children live in constant fear of being struck by the convict.
5. The Complainant feared for her life if the convict, then accused, was released on bond and that they have had long standing domestic violence issues leading her to turn to her relatives for support but they have given up on her as they have advised her to leave the convict who is considered to be a heartless ruthless monster but she has stuck to him despite physical abuses, in the name of her love for her children. She therefore has nowhere else to go.
6. The same scenario and description of the convict is replicated in the Pre-sentencing Report dated 16/8/2019 which paints the convict as an arrogant, violent man who is in conflict with his family and the community at large at all times. He is said to be assaulting his wife, the Complainant all the time while threatening to kill her as a result of which his children had ran away from home, leaving their victim mother alone. The victim is living in an extremely abusive relationship with the convict. She lives in fear and in my view, these are well founded fears, that the convict might as well kill the victim wife unless she leaves the matrimonial home. Community participation towards his rehabilitation is not guaranteed.
7. This court and all other courts of law exist to protect lives and property. The convict beat up the victim because of an alleged missing chicken. He is however reported to be arrogant, abusive and violent and therefore any slightest provocation sets him in motion to strike.
8. The sentence imposed on him is lenient and lawful. He has not challenged the conviction and sentence by way of an appeal despite putting up a spirited fight at the trial where he pleaded not guilty to the charge. The proceedings in the lower court were properly conducted.
9. For the reasons that the convict is likely to do more harm if non-custodial sentence is considered in his favour before he learns his lessons in prison to tone down from his ruthless arrogant and violent behavior, I find the convict unsuitable for noncustodial sentence and I therefore decline to revise the lawful lenient sentence imposed. Let the convict be rehabilitated in prison to shed off his arrogance and violent disposition so that by the time he returns home, he will have reformed and appreciated the need to live harmoniously with a family and or society at large.
10. The request for sentence revision is accordingly rejected and dismissed.
11. Orders accordingly.

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

R.E. ABURILI

JUDGE