

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL REVISION NO. 36 OF 2020

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

MARTIN OWINO OCHIENG.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Application for revision of sentence vide Senior Resident Magistrate's Court, Ukwala Criminal Case No. 422 of 2019 dated 16.9.2019 before Hon. C.N. Sindani, Senior Resident Magistrate)

RULING

1. The convict **Martin Owino Ochieng** was convicted on his own plea of guilty of the offence of being found in possession of 30 grams of cannabis sativa/ bhang. He was fined Kshs. 100,000/= in default to serve one year imprisonment. He was arrested on 15/9/2019 hence he has been in prison for 6 months.
2. The sentence is lawful. In mitigation the accused said that he was an orphan and that the bhang added him energy to farm for people. That is no excuse for a 28 year old man.
3. He is a first offender, according to the trial court record.
4. No probation report was called for and at the moment, owing to COVID -19 global pandemic spread, the Probation Officers are unable to reach prisons to interview the inmates.
5. Considering all the above, and in the spirit of prison decongestion, I hereby exercise judicial discretion under **Section 362 and 364 of the Criminal Procedure Code** and Article 165 of the Constitution and revise the sentence imposed on the convict. I suspend the remainder of the prison term and order that the convict **Martin Owino Ochieng** shall be released from prison forthwith with a warning not to repeat the offence in the next six months of the date of release. In breach, 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