



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL REVISION NO. 3 OF 2020

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

PETER OYENGU OKUMU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Application for revision of sentence vide Principal Magistrate's Court, Bondo vide Criminal Case No. 544 of 2019 dated 13.8.2019 before Hon. E.N. Wasike, Senior Resident Magistrate)

RULING

1. The convict **Peter Oyengu Okumu** was convicted of the offence of grievous harm contrary to **Section 234 of the Penal Code**, on his own plea of guilty. He faced another count of threatening to kill contrary to **Section 223 of the Penal Code** and he pleaded guilty to both counts.
2. He was sentenced to serve two years imprisonment on count one and in count two, he was sentenced to serve six months imprisonment. This was on 13/8/2019.
3. In his mitigation before sentencing he pleaded for forgiveness saying he was a first offender.
4. The P3 form produced by the Prosecution as an exhibit shows that the complainant sustained multiple injuries including fractures on the right distal shaft of the radial bone, fracture of both left radius and ulnar bone shafts, deep cut wound on the left thigh laterally, deep cut wounds, lower third of the left thigh medially and he suffered grievous harm.
5. The facts and circumstances leading to the commission of such heinous crime are simple. That the convict saw the complainant walking with his wife along the road as the two had just met on the road then the convict confronted them with a panga and cut the complainant mercilessly. He later threatened to kill the victim after the latter was discharged from hospital. Those injuries are serious.
6. I do not see any provocation necessary to warrant such brutal attack. The complainant could have died. The offence is serious and such injuries have a permanent effect on the life of the victim. The offence of grievous harm carry up to life imprisonment therefore 2 years imprisonment was a slap in the face considering the circumstances leading to the offence. There is no justification for such brutal attack by one human being against another human being. Live and let live. The pain suffered by the Complainant victim can never be adequately compensated whereas the convict is about to complete his temporary loss of liberty for only a few months and return home.
7. The Probation Officer has filed a report dated 12/3/2020 saying that the convict regrets the offence and claims that he suspected the victim to have had an intimate relationship with his wife, which the victim vehemently denies.
8. He seeks to reach out to the victim to apologize to him. He promises never to reoffend. He claims that he found the victim in a compromising position with his wife in the bush and that he got angry and that he has since forgiven his wife after she apologized for infidelity.
9. The convict is a first offender.
10. The victim denies any intimacy with the convict's wife but is said to be willing to forgive the offender. He is also married but fears that the offender might be holding a grudge against him. He is ready to receive the apology. He says prison term will not change his injuries but is hopeful that the offender can be warned before being released from prison.
11. I have considered all the above circumstances and the pleas for and against sentence revision.

12. As earlier stated, the sentences meted out on the convict are very lenient considering the seriousness of the offence and injuries sustained by the victim who nonetheless, has a soft heart and is willing to forgive the offender. The offender too is remorseful and prays for leniency promising not to reoffend.

13. He has already served about 7 months of the 2 years prison term imposed on him following a plea of guilty.

14. Having said that, and as the victim and offender who are neighbours are willing to forgive one another, I exercise discretion and revise the prison sentence and order that the convict **Peter Oyengu Okumu** shall be released from prison to serve probation for the remainder of the term, which is one year and three months.

15. Orders accordingly.

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

R.E. ABURILI

JUDGE