

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CRIMINAL REVISION NO. 38 OF 2020

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

FREDRICK ODUOR ONYANGO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Application for revision of sentence vide Senior Magistrate's Court, Ukwala Criminal Case No. 425 of 2019 dated 14.10.2019 before Hon. C.N. Sindani, Senior Resident Magistrate)

RULING

1. The convict **Fredrick Oduor Onyango** was convicted on his own plea of guilty for the offence of being found in possession of 48 rolls of Bhang as proven by production of a Government Analyst report as exhibit. He was sentenced to pay a fine of Kshs. 200,000/= in default to serve 1 year in prison. The value of the narcotic drug is Kshs. 1,000/=.
2. In mitigation, he pleaded for leniency. The Prosecution stated that it had no previous records hence the convict is a first offender.
3. I have considered the request for Revision of Sentence for purposes of prison decongestion at this critical moment in our county when we are all threatened by the spread of Covid -19 global pandemic. The offence is serious as it negatively affects the community. Bhang partakers also get involved in other crimes such as theft, robbery and assault or violence generally.
4. However, as the convict is a first offender and he pleaded guilty and sought for forgiveness, the trial court should have sought for a social inquiry report which he did not. At the moment, the probation officers may not access prisons to interview the prisoners due to the necessary restrictions occasioned by the COVID-19 plague.
5. For that reason, and as the convict has been in prison, including remand period, for about six months of the one year imprisonment imposed, I hereby exercise judicial discretion and in the spirit of promoting prison decongestion, I suspend the remainder of the prison term and order for the release of the convict **Fredrick Oduor Onyango** with a warning for him not to commit any offence in the next six months or face arrest and recommittal to prison to complete sentence.
6. Orders accordingly

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

R.E. ABURILI

JUDGE