

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CRIMINAL REVISION NO. 41 OF 2020

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

PATRICK OTIENO OGUT.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Application for revision of sentence vide Senior Resident Magistrate's Court, Ukwala Criminal Case No. 149 of 2019 dated 10.2.2020 before Hon. C.N. Sindani, Senior Resident Magistrate)

RULING

1. The convict **PATRICK OTIENO OGUT** is serving 4 months' imprisonment vide a judgment in *Ukwala SRM Cr. Case No. 149/2019* rendered on 10.2.2020 by Hon. C.N. Sindani, SRM following the conviction for the offence of assault causing actual bodily harm.
2. He had been placed on community service for 8 months but he absconded and on being arrested he was sentenced to serve 4 months imprisonment. He has now served one month and 9 days of the 4 months. In his mitigation, he conceded absconding because his employer fired him.
3. The convict also pleaded guilty to the charge of assault causing actual bodily harm in the lower court and the probation officer filed a report dated 18/4/2019 showing that the convict was suitable for community service, which sentence he served for 4 months of the 8 months before he absconded. The sentence imposed was lawful and lenient.
4. The Complainant did not sustain serious injuries and was his neighbour by virtue of his being employed in the area as a shamba boy. The employer had promised to retain him in employment if he was given community service but he later sacked him. The convict is a first offender.
5. In my view, the convict can safely benefit from prison decongestion as the sentence is short and he has served part of it substantially.
6. That being the case, I revise the remainder of the sentence of 4 months imprisonment imposed on the convict and order that the convict Patrick Otieno Ogut is hereby sentenced to the period already served on CSO and in prison.
7. Therefore, unless otherwise lawfully held, the convict Patrick Otieno Ogut is hereby set at liberty.

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

R.E. ABURILI

JUDGE