



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

CRIMINAL DIVISION

CRIMINAL REVISION CASE NO. 1285 OF 2018

LESIT, J.

JOHN OLUTABENO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence by Hon. Bernard Ochoi (PM)

dated 11th January, 2018 in Kibera Chief Magistrate’s Court, Criminal Case No.2312 of 2014)

RULING ON SENTENCE REVIEW

1. The Applicant has approached this court by way of a **Notice of Motion** filed on 2nd December 2018. Even though no jurisdiction is invoked, it is clear from the reading of the face of the application that it is an application for review of sentence.
2. The prayers on the face of the motion seeks to have a review of the sentence from a term of imprisonment to a non-custodial sentence, in particular a Probation term. There is also included on the face of the application mitigating circumstances.
3. The Applicant states that he seeks a second chance to be allowed back to the society urging that he is a reformed man both spiritually and mentally. He urges that he was a sole bread winner of his family and a responsible man. That since his incarceration his family is now stranded. He also says he has suffered enough while in custody and was remorseful for his actions.
4. In his oral submissions before court through Teams, the Applicant added more mitigating grounds. He urged that he had undertaken life skills having learnt how to live in the community. He urged that he had also undertaken Bible Studies and also Entrepreneurship.
5. Ms Nyauncho, Learned Prosecution Counsel did not oppose the application. Counsel urged that the Applicant was convicted of Handling Stolen Property and sentenced to serve 4 years in prison in January 2018. Counsel urged that he had served a substantial part of his sentence and was due for release in September 2020 considering remission.
6. I have considered this application. I note that Applicant was convicted of Handling a stolen vehicle contrary to **section 322(1) and (2)** of the **Penal Code** on 11th January 2018 and sentenced on the same day to 4 years’ imprisonment.
7. The Applicant did not file any affidavit in this matter. Court was entitled to review his sentence under **section 362** and **section 364** as read with **section 354** of the **Criminal Procedure Code**.
8. Considering the period served and the remission period, his expected date of release should be 12th September 2020. Bearing that in mind I agree that the Applicant has served a substantive part of his sentence. Accordingly, I allow his application and reduce his sentence to the period already served.
9. He should be released forthwith unless he is otherwise lawfully withheld.

DELIVERED AT NAIROBI THROUGH TEAMS THIS 30TH DAY OF JULY, 2020.

LESIT, J.

JUDGE

In presence of Applicant in person present

Ms Nyauncho for State

Gitonga – Court Assistant

LESIT, J.

JUDGE

30/7/2020