



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT SIAYA**

**CRIMINAL APPEAL NO. 85 OF 2019**

**FREDRICK ODHIAMBO OBARE.....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

*(Being an appeal against sentence conviction from the judgment in the Principal Magistrate's Court at Siaya in Criminal Case No. 1110 of 2019 dated 5.12.2019 by Hon. MUTHONI MWANGI Resident Magistrate.)*

**JUDGMENT**

1. The appellant herein **Fredrick Odhiambo Obare** was convicted on his own plea of guilty of two counts of malicious damage to property and disrespect to the court. He was sentenced to serve 2 years imprisonment on each Count, sentences to run concurrently.
2. He appeals against sentence only.
3. I observe that the plea was unequivocal and before sentence was passed, the trial court ordered for a Presentence Report which was filed by David O. Odumba Probation Officer and is dated 15.12.2019.
4. The report paints the appellant/convict as a person who requires intense and closer supervision to help him quit bhang and become a good member of the society. He was found unsuitable for non-custodial sentence as he is reported to be abusing alcohol and substances from when he was in school.
5. He is a Form Four leaver and is disrespectful not only to his mother but also to the public at large. Because of substance abuse, he cannot perform any meaningful activity at home. It is claimed that some community members hail him when he is high on drugs and when he utters obscene words towards his family members.
6. I have heard the appellant in his plea for sentence reduction. He is a young man of 28 years and from his demeanor in court, he still has hallucinations of the influence of substance abuse albeit he has been off the drugs for nearly one year in prison. The sentence imposed is lawful and lenient considering the conduct of the convict/appellant.
7. For the above reasons, I am satisfied that only prison will in the short term help rehabilitate and reform the appellant to be a good person who is law abiding before he can be released back into the society.
8. I find the appeal against sentence not merited. The same is hereby dismissed.
9. The appellant to serve full sentence in prison.
10. File Closed.
11. Orders accordingly.

**Dated, Signed and Delivered at Siaya this 24<sup>th</sup> day of November, 2020**

**R.E. ABURILI**

**JUDGE**