

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL APPEAL NO. 63 OF 2018

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

KENNEDY ONYANGO OTIENO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Appellant has applied to withdraw his Petition of Appeal and urges the court to forgive him because he committed the offence. The Prosecution has no objection to such withdrawal. Accordingly, this appeal is hereby marked as withdrawn.
2. Nonetheless, the trial court record shows that as at 14/2/2018, the Appellant was a minor aged 17½ years as per the Age Assessment Report from Dr. Teresa Agwanda, Siaya County Referral Hospital.
3. The Trial Court was cognizant of this fact but went ahead to sentence the appellant to 3 years imprisonment. By appearance the appellant is a very young adult now who deserved to be rehabilitated through guidance and counselling as per the Probation Officer's Report dated 1/11/2018.
4. That he was a petty thief in the community and that is why nobody talked good of him. He abuses alcohol and drugs.
5. That may be the case but life's skills and empowerment intervention were more critical than prison sentence. As the Appellant was 17½ years when he committed the offence, he was a minor hence he should have been sentenced in accordance with **Section 191 of the Children's Act** which sets out the many modes of punishment such a young person should be accorded.
6. The sentence, as correctly submitted by Ms. Odumba, Prosecution Counsel, was illegal. It cannot stand. This was a proper case for Sentence Revision. As the Appellant has already served nearly one year in prison and since he was initially placed in Children's Remand at Kisumu, he has learnt his lesson. As an adult now, he will face the full force of the law if he engages in any criminal activities.
7. **In the premises, I hereby revise the sentence of 3 years imprisonment and substitute it with an order discharging the appellant from Prison unconditionally. He is forthwith set at liberty unless otherwise lawfully held.**

Orders accordingly.

Dated, Signed and Delivered in Open Court at Siaya this 26th Day of February 2019.

R.E. ABURILI

JUDGE