



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT SIAYA**

**(STEALING)**

**H.C. CR. APPEAL/ REVISION NO. 113 OF 2018**

**KEN MOSES ANDIWO.....APPLICANT**

**VERSUS**

**STATE.....RESPONDENT**

*(Being an appeal against both the conviction and the sentence dated 14.9.2017 in Criminal Case No. 440 of 2017 in Bondo Principal Magistrate's Court before Hon. M. Obiero – PM)*

**RULING**

1. The convict **Ken Moses Andiwo** a 30 year old male adult of sound mind was on 14.9.2012 and on his own plea of guilty for the offence of stealing, convicted and sentenced to serve 18 months imprisonment. The property subject of the charge was recovered and handed over to the owner after the conviction.
2. The convict is serving his 18 months imprisonment and has served almost half of it. He lodged an appeal against conviction and sentence but is before this Court seeking to withdraw the appeal and he orally applies that the Court do consider revision of his sentence as he is remorseful, was influenced by peer pressure and that he is sickly and on ARV medication in prison but that he has a challenge with the diet.
3. The Prosecution Counsel Mr. Okach has no objection to the application for revision of sentence and withdrawal of the appeal. I have carefully considered the 2 applications by the convict. I am satisfied that there would be no merit in the appeal as filed. The same is hereby marked as withdrawn on application by the convict, to pave way for an application for revision of sentence.
4. On the application for revision for sentence, this Court is enjoined by **Section 362 of the Criminal Procedure Code** to call for record of proceedings of the lower Court to satisfy itself as to the correctness, legality or propriety of the finding, sentence or order recorded or passed and to the regularity of any proceedings of any such subordinate Court. The Court upon calling for such record or proceedings is empowered by Section 364 of the CPC, to, among others, in the case of any other order other than an acquittal, alter or revise the order. In this case, the applicant does not challenge the propriety of conviction or sentence. He only seeks that this Court considers revision of sentence to accord him an opportunity to serve non-custodial sentence. The conviction and sentence meted out to him were sound and lawful and the prison sentence of 18 months for the offence of theft is within the limits stipulated under Section 275 of the Penal Code. The maximum is three years.
5. However, owing to the mitigating factors given by the convict, this Court in exercise of its revision jurisdiction and discretion hereby makes an order that the convict having served nearly half of the 18 months sentence, he is hereby ordered to be released to serve three months community service at Masogo Health Centre in Awasi– Muhoroni which is near his home area as he recuperates. Therefore, unless lawfully held, the Accused Person's Application is hereby allowed and sentence revised.

Orders accordingly.

**Dated, delivered and signed at Siaya this 24<sup>th</sup> day of May, 2018.**

**R. E. ABURILI**

**JUDGE**