



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

HC. CR. REV. NO. 134 OF 2018

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

DUNCAN OCHIENG ONYANGO....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal against both the conviction and the sentence dated 17.04.2018 in Criminal Case No. 488 of 2018 in Siaya Law Court before Hon. J. Ong'ondo – PM)

RULING OF THE COURT

The Applicant herein **Duncan Ochieng Onyango** was charged with the offence of stealing stock and an alternative count of handling stolen goods contrary to **Section 278 and 322(2) of the Penal Code** respectively.

He pleaded not guilty to the 1st Count and pleaded guilty to the second count before Hon. J. Ong'ondo, PM Siaya in Siaya PM Cr. Case No. 488/2018. He was convicted on his own plea of guilty and sentenced to 3 years imprisonment with hard labour, after mitigations being considered.

He has not challenged the conviction and sentence which this Court finds was sound and lawful.

He however, now applies for revision of sentence stating that he is a first offender. He is aged 22 years and only completed Form 4 in 2014 and passed. That he needs to continue with his further education. He is remorseful for the offence committed, he is an orphan living with his aunt and that he was left with two cows without knowledge that they were stolen property. He states that his future will be bleak if he is left to serve the full sentence. He prays for a non-custodial sentence.

I have considered the plea by the Applicant/Convict who is a young adult and the Probation Officer's Post Sentence Review Report dated 17/7/2018 by Marvin Nganyi, Probation Officer, Siaya.

I note that this matter was forwarded to Court for consideration in terms of prison decongestion programme where petty offenders or offenders whose prison terms are short can be accorded an opportunity to complete their sentences outside the prison walls.

The Probation Officer's report is favourable to the convict serving non-custodial sentence. The victim of the stock theft is forgiving and the community appreciates that the victim is hardworking and had no known criminal record. Further that he lacked fees to pursue his University education at UON where he was admitted but had to drop out to do business and raise fees. The Convict needs guidance and counselling.

In the premises, I allow the request, revise the sentence of 3 years and substitute it with an Order placing the Convict on probation for a period of 9 months from the date of release from prison. The Convict to be under close supervision of Probation Officer, Siaya County for guidance and counselling.

Dated, Signed and Delivered at SIAYA this 31ST day of July 2018.

R.E. ABURILI

JUDGE

In the presence of:

Mr. Okach: Prosecution Counsel for the State

Duncan Ochieng Onyango: Applicant in person (present)

Court Assistant: Akida and Brenda