

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

HC CR. REV. NO. 90 OF 2018

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

JOSEPH ODHIAMBO AYAKO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING ON REVISION

The Applicant/Convict was convicted of the offence of grievous harm and sentenced to serve 5 years imprisonment by Hon. Ongondo, PM, vide Siaya PMCr. Case No 580/2016. He pleaded not guilty and a full trial was conducted where he was found culpable.

The victim of the grievous harm is Joseph Odhiambo Owang who was seriously injured on his left hand when the convict cut him with a panga. He can no longer use the said hand. He lost sensation as tendons were seriously injured as shown by Ex1 and Ex 2, the P3 form and treatment notes for the victim.

The convict has not appealed and is only remorseful and claims to be suffering from strange diseases making his life miserable. He says he had no intention of injuring the victim. He has a wife and 5 children who are suffering as they depended on him. The Probation report by Odumba David, Probation Officer Siaya dated 19th July 2018 is not even signed and it shows that the victim of the grievous harm is still hurting as he is unable to use his left hand which was severely injured. The victim was rescuing his wife who was being assaulted by the convict for merely asking why the offender was uprooting Napier grass from the common boundary. The victim was cut on the head and when he raised his hand to protect his face, he was cut on the head leading to death of nerves as shown by the P3 form produced as an exhibit.

The conviction and sentence meted out are sound and lawful. The only question is whether this court should excuse its discretion in favour of such a heartless person whose irresponsible actions could have resulted into the death of the victim.

The maximum sentence for grievous harm is life imprisonment. The Applicant was lucky to be handed such a lenient sentence of 5 years by the trial court. I considering the circumstances of this case, heard the prosecution been involved in this revision, they may have asked for enhancement of sentence to match the heinous crime. The Applicant abused drugs – bhang. He must learn his lessons by being kept out of society temporarily, so that the society can also learn that crime does not pay, and that at times families have to live the consequences of criminal behavior. This must be tamed.

In the circumstances, I am not persuaded that the Applicant deserves any mercy from the Court. He cut the victim as if he was cutting wood!

The Application for revision of sentence is rejected and declined. I find the remorse being an afterthought after testing loss of liberty in prison. He can still be rehabilitated in prison and learn skills which will be useful to him when he leaves prison.

The application for revision is accordingly dismissed. The convict to serve full lawful sentence in prison.

Dated, Signed and Delivered at SIAYA this 31ST DAY OF JULY 2018.

R.E. ABURILI

JUDGE