



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

HC. CR. REV. NO. 159 OF 2018

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

ALFRED ODERA ONUONGA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Appeal against the sentence dated 12.9.2018 in Criminal Case No. 464 of 2018 at SIAYA Law Courts, PM's Court)

RULING OF THE COURT

On 12/9/2018, the Convict/Applicant **Alfred Odera Onuonga** was convicted of the offence of **Assault contrary to Section 251 of the Penal Code**. He was sentenced to serve 3 years in jail by the PM's Court at Siaya.

On 2/10/2018, he filed this application for revision and the court ordered for the trial court record and Sentence Review Report for perusal and consideration.

The trial court record has not been availed. However, the sentence review report has been filed by Mr. Marvin Nganyi, Siaya Probation Officer. It is dated 23/10/2018.

The convict started his sentence on 12/9/2018 which is ending on 12/9/2021. He assaulted his immediate neighbour and a brother to his father over a land dispute. He is married with 5 children. He is aged 37 years. He drinks alcohol. He was a mason in the community.

The Victim of the crime who is his uncle is bitter. However, the convict's wife is receptive as her eldest daughter has anaemia. She is a casual worker.

He requires anger management advice, interpersonal relations and reconciliation with the victim. Counselling is necessary for social reintegration and reconciliation with the victims of the offence.

He is suitable for non-custodial supervision.

I have considered the Probation Officer's report and the fact that the applicant is a first offender. He prays for a lesser sentence or non-custodial sentence. He claims to be HIV positive and sole bread winner for his family.

The victim is a close family member, brother to his father. There is need to promote reconciliation between the victim and the convict who has not challenged his conviction and lawful sentence meted out on him. The convict is a responsible person but has not managed his anger. He must learn to respect others and know that assaulting his uncle will not resolve the land dispute.

Land disputes can be resolved by reporting the matter to the local administration and or clan elders to intervene and where diplomacy fails then the court process should be invoked for judicial determination.

The Applicant/Convict must also learn to respect his uncle who is a brother to his father. His health status notwithstanding, he can live and let others live. This is so because there are medication if taken he can live positively and be productive in society since he has a family of a wife and 5 children who all rely on him for their livelihood.

The conviction was sound and sentence lawful. However, in the spirit of promoting reconciliation and harmony in the family of the victim and convict, and taking into account prison decongestion policy and objectives of punishment of offenders, the convict being a first offender, I shall accord the convict an opportunity to serve a non-custodial sentence and give him a chance to reform and apologize to the victim of the assault who is his uncle.

The convict is hereby given an opportunity to write a letter of apology to his uncle, the victim of the crime of assault, to be delivered to him by the Probation Officer, with a copy to be filed in court for records.

The sentence of 3 years imposed on the convict is hereby revised and substituted with an order that the convict shall serve probation for a period of one year from the day of his release from prison unless he is lawfully held.

Dated, Signed and Delivered at SIAYA this 31st Day of October 2018.

R.E. ABURILI

JUDGE

In the presence of:

Mr. Okach: Prosecution Counsel for the State

Alfred, Odera Onuonga: Applicant/Appellant in person (*present*)

Court Assistant: Brenda, Modestar