



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

HC. CR. REV. NO. 149 OF 2018

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

IDD WANGA MUSUNGU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Appeal against the sentence dated 8.8.2018 in Criminal Case No. 306 of 2017 at BONDO Law Courts, PM's Court)

And

(A Subsequent Ruling that was made on 18th October 2018 in Siaya HC Rev. Case No. 149 of 2018 at Siaya High Court before Hon. Lady Justice R.E. Aburili – Judge)

RULING

On 18/10/2018, this Court delivered a ruling revising sentence of 8months imprisonment meted out on the convict **Idd, Wanga Musungu** in Bondo PM Cr. Case No. 306/2017.

The Court in revising the said imprisonment term and substituting it with a suspended sentence took into the account the plea by the convict that he was suffering from Tuberculosis and that as the sentence was short and in line with the prison decongestion policy, bearing in mind his remorse, he should be accorded the opportunity to serve sentence outside prison. However, the court was conscious that TB is a highly infection disease and therefore ordered that the convict be taken to hospital and be given prescription medicine to use while serving suspended sentence, to avoid infection to other members of the society.

However, upon the said orders being issued and as the Siaya GK Prisons were complying with the said Ruling by escorting the convict to hospital for treatment, the doctors on examining the convict found that he was free from any Tuberculosis hence the report dated 22/10/2018 which has been filed in Court signed by the C.O. Moses Aswani, the Clinical Officer, Lung and Skin on behalf of the Medical Superintendent, Siaya County Referral Hospital.

The report reveals that albeit the convict had an old history of TB, there were no traces on examination which included chest X-rays. Accordingly, the convict was brought back to court on 23/10/2018 for further orders and directions.

On appearing before the Court, the convict maintained that he had TB and that when he was jailed, he was on treatment. Further, that he was not aware that the highly infectious disease had cleared.

Mr. Okachi, SPPC was of the view that the convict be given a benefit of doubt but that he should now serve community service as the suspended sentence was informed by the allegation that he suffered from TB which was contagious and which would be a public health risk if the convict served in the community before being cleared of the diseased.

I have considered the report by the Clinical Officer and the submissions by the convict and the Prosecution Counsel.

As the revision of the sentence to suspended sentence was informed by the belief that the convict was a TB patient which turned out to be negative, I hereby review the orders of 18/10/2018 and substitute the order of suspended sentence with an order that the convict shall, in accordance with the recommendation of the Probation Officer, serve probation for the remainder of the sentence from the date of release from Siaya GK Prison.

The convict shall be under strict supervision of the Probation Officer, Kakamega County, Mumias Sub-county and shall abide by the conditions set out in the probation order under the **Probation of Offenders Act, Cap 64 Laws of Kenya** failure to which he shall be arrested

and sent to prison to complete the sentence in prison.

Dated, Signed and Delivered at SIAYA this 24th Day of October 2018.

R.E. ABURILI

JUDGE

In the presence of:

Mr. Okach: Prosecution Counsel for the State

Idd, Wanga Musungu: Applicant/Appellant in person (present)

Court Assistant: Brenda, Modestar