



**OREPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT CHUKA**

**CRIMINAL REVISION NO. 128 OF 2018**

**JAMES GITONGA MBAKA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Intended Appeal from Conviction and sentence of the Chief Magistrate's Court in Criminal Case No. 1042 of 2017 at Chuka delivered by HON. NJOKI KAHARA (RM) on 10/5/2018).*

**R U L I N G**

1. **JAMES GITONGA MBAKA**, the applicant herein was charged and convicted for the offence store breaking and committing a felony contrary to **Section 306(a)** of the **Penal Code**. He was also convicted of 2<sup>nd</sup> count of neglecting to prevent a felony contrary to **Section 392** as read with **Section 36** of the **Penal Code**. He was sentenced to serve 3 years in the first count and 1 year in the 2<sup>nd</sup> count with both sentence running concurrently.
2. The applicant has now moved this court pursuant to **Section 362** and **364** of the **Criminal Procedure Code** for revision of his sentence asking for leniency on the ground that he has two children who are being taken care of by his grandmother and that his wife is jobless and unable to provide for them in his absence.
3. This court has perused the lower court file and noted that though the sentence provided by law is upto 7 years in the first count, this court notes that the probation report dated 22<sup>nd</sup> October, 2018 and filed in this court the same day is positive about the applicant. He is a first offender and in view of the policy to decongest prison by giving a chance to reformed convicts to serve their sentences outside custody, I am inclined to allow the application for revision. The sentence passed against the appellant is varied and will now serve the remainder of his term on probation. He will be reporting to the probation officer periodically as directed by the probation officer until he finishes his term of 3 years. In default of this condition, the applicant will be re-arrested and taken back to jail to finish the remaining term of his sentence. The applicant should strictly abide by terms given by the probation officer.

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

**R.K. LIMO**

**JUDGE**

**24/10/2018**

Ruling signed, dated and delivered in the presence of applicant in person and Machirah for state/Respondent.

**R.K. LIMO**

**JUDGE**

**24/10/2018**