



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

HC. CR. REV. NO. 146 OF 2018

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

SAMSON ODHIAMBO ODERA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal against the sentence dated 11.01.2018 in Criminal Case

No. 26 of 2018 in BONDO Law Court before Hon. E.N. Wasike - SRM)

RULING OF THE COURT

1. The Applicant/Convict **Samson Odhiambo Odero alias Odoro** was on his own plea of guilty convicted and sentenced to serve 20 months imprisonment by Hon. E.N. Wasike SRM, Bondo on 11.1.2018 vide Cr. Case No. 26/2018 for the offence of stealing contrary to **Section 275 of the Penal Code**.
2. It was claimed that between 2nd and 4th January 2018 at Uriri Village, West Yimbo location in Bondo Sub County within Siaya County, he was, jointly with others in the case and before Court, stole a laptop, Techno Mobile phone, Sunny Camera, Brown jacket, grey black bag, 25Kg of assorted nails, sufuria, torch and 3 chicken and cash Shs. 3,100/= all valued at Kshs. 60,900/= the property of Alfred Nyaware Angute.
3. This case is related to Revision No. 147 of 2018 wherein the applicant is Stephen Otieno Olita, the co-accused to this applicant.
4. The applicant herein was an employee of the complainant and he conspired with the 2nd accused his co-employee (Geff Odhiambo) to steal their employer's property after breaking into the Complainant's house and accessing it through a window. This was while the complainant was away from home and the theft was discovered on 4/1/2018 on the return on the complainant. Some of the properties namely the laptop and bag were recovered.
5. The accused persons were all first offenders and the Court after taking a plea of guilty which I find to be unequivocal, considered their mitigations and sentenced them to each search 20 months imprisonment.
6. The convicts have not challenged their conviction and sentence. The Applicant/Convict only seeks revision of his sentence which is in the discretion of this court.
7. He claimed to ask for forgiveness. He lives with 3 orphans and his old mother. This court does not and will not condone criminal activities. I have seen trial court record and I am satisfied as to the soundness of the conviction and lawfulness of the sentence meted out on the convict, which was lenient enough.
8. Persons entrusted by their employers should not betray that trust and pounce on the property of their employees. They must learn to respect other person's properties and eat their own sweat through legal genuine earnings.
9. On 31/8/2018, ordered for a Probation Officer's Report on sentence review. The Probation Siaya County, Mr. John Oyare Oyiek filed his report on 2/10/2018 though dated 3/10/2018. The report shows that the convict was hardly one week old in his employment when he stole from his employer.

10. The convict is married with two children. He is aged 32 years. He claims the goods were stolen by another person, his co-accused. He regrets that he was found with stolen property.

11. The Probation Officer recommends a non-custodial sentence. I have considered the Probation Officer's report and circumstances of this case.

12. I observed that the accused breached the trust bestowed on him by his new employer. He has however, learnt his lessons having served part of the custodial sentence.

13. Albeit there are no serious mitigating factors, however, rehabilitation of the offender being one of the objectives of sentencing should be promoted. The convict can be rehabilitated to live an honest life and work hard to eke a decent living.

14. The convict is hereby given an opportunity to serve non-custodial sentence in the spirit of prison decongestion, but warned not to commit any offence and to adhere to the conditions for non-custodial sentence.

15. Accordingly, the prison sentence is hereby revised and set aside and substituted with an order that the Convict Samson Odhiambo Odera alias Odera shall serve Community Service at Ombeyi Secondary School for a period of 45 days from the date of his release from prison in compliance with this ruling, unless otherwise lawfully held.

16. **Orders accordingly.**

Dated, Signed and Delivered in open court at Siaya this 23rd Day of October 2018.

R.E. ABURILI

JUDGE

In the presence of:

Mr. Okach: Prosecution Counsel for the State

Samsom Odhiambo Odera: Applicant in person (present)

Court Assistant: Brenda, Modester