

REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KAKAMEGA.

MISC. CRIMINAL REVISION NO. 282 OF 2015.

BENJAMEN INGUTIA OKUTOI.....APPLICANT.

VERSUS

REPUBLIC.....RESPONDENT.

(Being a Revision from the order of Butere Principal Magistrate's Court Criminal Case No.486 of 2013 by Hon. M.I. Shimenga , Resident Magistrate on 9th May, 2014.)

RULING ON REVISION.

1. The applicant was convicted and sentenced to serve four (4) years imprisonment on 9th May, 2014, for the offence of stealing a motor cycle contrary to section 278 (a) of the Penal Code.
2. A probation officer's report on record indicates that the applicant was sentenced to serve three (3) years imprisonment. This information is misleading and not factual.
3. Section 3 (1) of the Community Service Orders Act provides instances where an applicant **can** be placed under Community Service Orders in the following words:-

“Where any person is convicted of an offence punishable with

- a. ***Imprisonment for a term not exceeding three years, with or without the option of a fine;***
or
- b. ***Imprisonment for a term exceeding three years but which the court determines a term of imprisonment for three years or less, with or without the option of a fine, to be appropriate.”***

4. In view of the misleading information given by the Probation Officer in regard to the prison term that the applicant is required to serve, I cannot rely on the probation report submitted to this court.
5. I decline to exercise my discretion in terms of the provisions of section 364 of the Criminal Procedure Code. The applicant can still exercise his right of appeal.

It is so ordered.

DELIVERED, DATED and SIGNED at KAKAMEGA on this 27th day of May, 2016.

NJOKI MWANGI

JUDGE