

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

REVISION NO. 584 OF 2013

(Being A Revision in the Conviction and Sentence on 28.06.2013 by the Honourable J.Kwena Senior Principal Magistrate at Bomet in Criminal Case No. 584 of 2013)

JOSPHAT MAIYWA.....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 18th October, 2013)

RULING ON REVISION

This is the ruling in an application for revision under **Sections 362 and 364** of the **Criminal Procedure Code, Chapter 75** of the **Laws of Kenya**, and under Section 8(2) of the Community Service Orders Act, 1998. The applicant is Josphat Maiywa who was charged with the offence of burglary contrary to Section 304 of the Penal Code, Chapter 63 of Laws of Kenya and stealing contrary to Section 279 (b) of the Penal Code in Criminal case No. 584 of 2013 in the Senior Principal Magistrate's Court at Bomet.

The applicant pleaded guilty as charged and the learned trial magistrate on 28.06.2013 convicted and sentenced him to serve 14 months imprisonment.

The probation officer has filed a report in view of the application for revision now before this court. The report indicates that the applicant is serving as a carpenter because he holds grade II carpentry. The report notes that the applicant appreciates that he may improve himself by taking advantage of the courses available in prison. The report recommends a community service order in favour of the applicant.

The court has considered the report by the probation officer and the gravity of the offence. The applicant broke into the residential house belonging to his former employers and stole property valued at Kshs. 40,000. The report by the probation officer indicates that the applicant will gain from the rehabilitative programmes at the prison especially the courses available. The report does not show the capacity available at the applicant's family to assist him improve in event of a service order being allowed.

The court has considered all the circumstances of the case including that the conviction and sentence was imposed to apply to both offences in issue.

In conclusion, the conviction and sentence by the honourable trial court is upheld and the application for a community service order is declined.

Signed, dated and delivered in court at **Kericho** this **Friday, 18th October, 2013.**

BYRAM ONGAYA

JUDGE