



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT SIAYA**

**CRIMINAL REVISION NO. E001 OF 2021**

**CORAM: HON. R.E. ABURILL J**

**DANIEL MACHIA OTIATO.....APPLICANT/CONVICT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(An Application seeking Revision of sentence in Criminal Case No. 101 of 2020*

*at Bondo Principal Magistrate's court delivered on 28.2.2020*

*by Hon. S. Mathenge, Resident Magistrate)*

**JUDGMENT ON REVISION OF SENTENCE**

1. The Applicant/convict herein Daniel Machia Otiato was convicted on his own Plea of guilty for the offence of assault causing actual bodily harm contrary to Section 251 of the Penal Code on 28/2/2020 by Hon. S. Mathenge, Resident Magistrate in Bondo PM Cr. Case No. 101 of 2020. After mitigation and Presentence report, he was sentenced to serve 2 years imprisonment. He has not appealed. He has now served one year in prison.
2. On 5/2/2021, he applied to this court for sentence Revision claiming that he is remorseful and pleads for the court's leniency. He is a first offender and that he has reformed. He has a young family and a wife who depended on him for livelihood.
3. I have considered the application for sentence Revision, mitigation and Presentence Report dated 28/2/2020. I take cognizance of the fact that the applicant has now served 1 year of the 2 years imprisonment and that he is remorseful and has learnt his lesson while in prison, as he was a breadwinner for his young family who are now desperate.
4. The Complainant was a 14 year old girl and no reasons were given why the accused attacked the Complainant minor. The Probation Officer established that the Applicant/convict is problematic in the community and is abrasive. He was a boda boda rider. He needs extreme reformation programme.
5. I have considered the fact that he was a first offender despite his abrasiveness and he readily accepted his mistake and admitted the offence.
6. I have also considered the injury occasioned on the Complainant being a cut wound on the head and swelling on the left arm occasioned by beating using a stick.
7. As the Applicant has served half of the prison term and promises to be law abiding, in my humble view, and as the offence is a misdemeanour, he deserves a chance for non-custodial sentence to enable him find an opportunity to apologize and reconcile with the Complainant and her family and the community at large, who view him negatively. He has been in prison where people are rehabilitated to reform and be better citizens.
8. For the above reasons, albeit the sentence imposed was lawful and lenient, I exercise discretion and revise the 2 years prison term and order that the convict/Applicant Daniel Machia Otiato alias Atiara shall serve 9 months probation for the remainder of the prison term, to be calculated from the date of his release upon service of this order upon prison authorities. Orders accordingly.
9. File closed.

**Dated, signed and Delivered at Siaya this 1<sup>st</sup> Day of March 2021**

**R.E. ABURILI**

**JUDGE**