



**REPUBLIC OF KENYA**

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

**REVISION NO. 63 (E066) OF 2021**

**CALISTAS DEVIS WENWA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The Applicant , Calistas Devis Wenwa was convicted on his own plea of guilty for the offence of **Malicious damage to property** contrary to **Section 339(1)** of the **Penal Code**. According to the facts narrated by the prosecution, the Applicant did on 9<sup>th</sup> February 2021 at Bondeni village, Trans Nzoia County willfully and unlawfully destroy four iron sheets valued at Kshs 2,400/=, the property of Michael Wenwa. The Applicant was sentenced to pay a fine of Kshs 30,000/= or in default he was ordered to serve twelve (12) months imprisonment. He did not pay the fine. He is serving the default custodial sentence. Aggrieved by the sentence, the Applicant has applied to this court for the revision of the sentence.

The Applicant stated that he was annoyed when he committed the offence. He had learnt that anger does not pay. He asked the court to forgive him and give him his freedom. He promised not to commit another offence if released. The Prosecution was not opposed to the court exercising its appropriate revisionary discretion.

Prior to the hearing of the application, the court ordered for a probation report to be prepared. The same was filed in court. According to the report, the complainant in the case is the Applicant's brother. The two had a boundary dispute. The boundary issue was resolved but it appeared that the Applicant was not satisfied with the outcome. On the day he committed the offence, he was drunk. The complainant attributed the Applicant's travails to excessive consumption of alcohol. He had forgiven him and hoped that during the period of his incarceration he had learnt his lesson. He was not opposed to the Applicant serving the remainder of his sentence on probation.

Although the trial court properly exercised its discretion when it sentenced the Applicant, this court is of the view that there are changed circumstances since the Applicant's incarceration. It is apparent that the Applicant has learnt the folly of his ways since his imprisonment. He has learnt that anger does not pay. On the part of the complainant, he is willing to forgive the Applicant and had no objection to the Applicant's custodial sentence being accordingly revised.

In the premises therefore, this court formed the view that the Applicant has been sufficiently punished. The default custodial sentence that he is serving is commuted to the period served. He is ordered set at liberty forthwith and released from prison unless otherwise lawfully held. It is so ordered.

**DATED AT KITALE THIS 10TH DAY OF JUNE 2021.**

**L. KIMARU**

**JUDGE**