

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CRIMINAL REVISION NO. E087B OF 2021

CORAM: HON. R.E. ABURILI J

ISAAC ODHIAMBO ALUOCH.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Application seeking revision of sentence in Ukwala Senior Resident Magistrate Court

in Cr. Case No. 607 of 2021 on 11.8.2021 by Hon. C.N. Sindani, Principal Magistrate)

RULING

1. The applicant in this revision application is a convict in Ukwala PM's court Cr. Case No. 607 of 2021. He faced a charge of malicious damage to property contrary to Section 339(1) of the Penal Code. He pleaded guilty to the charge and facts where it was stated that on 2/8/2021 at Sega C.B.O stage, Ugunja Sub County, Siaya county, he willfully and unlawfully damaged the phone make Samsung A10S valued at Kshs. 15,000/= the property of Dancan Onyango Aloo.

2. Upon conviction, on his own Plea of guilty, the applicant in mitigation asked for pardon and was sentenced to serve one (91) year imprisonment on 11/8/2021.

3. I have perused the proceedings before the lower court. They were regularly conducted and the sentence imposed was lawful and lenient.

4. I have also considered circumstances under which the offence was committed. The complainant is alleged to have gone to a scene of accident and started taking videos (filming) in the midst of protests by bodaboda operators against an accident at Sega stage. The convict took the complainant's phone. Which was being use for filming the accident scene and smashed it on the road for which act damaged the screen.

5. According to the prosecution, the accused was a first offender his actions were and cannot be justified in any way. He deserved a deterrent sentence. However, being a first offender and bearing in mind the circumstances under which the admitted offence was committed, the trial court had the discretion to mete out various modes of punishment available in law. He could have called for a Probation/Presentence report before deciding whether the convict deserved a prison term.

6. I have considered the Plea by the convict through his counsel. The offence of malicious damage to property attracts upto five years imprisonment upon conviction under Section 339(1) of the Penal Code. Therefore one year imprisonment was lenient and lawful but for a first offender, alternatives to prison term should have been considered, including a fine.

7. Prisons are crowded because petty offenders occupy majority of the spaces and in the current dispensation, owing to covid-19 pandemic, even after conviction, convicts are held at police stations for unnecessarily longer periods before they are admitted to prisons, for quarantine before they are integrated with other prisoners.

8. For the above reasons, I exercise discretion and revise the sentence imposed on the convict Isaac Odhiambo Aluoch and set it aside and substitute it with an order that the convict Isaac Odhiambo Aluoch shall pay into this court a fine of Kenya shillings Twenty Thousand only in default, to serve one year imprisonment. I so order.

9. File closed.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 22ND DAY OF SEPTEMBER 2021

R.E. ABURILI

JUDGE