

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL REVISION 2 OF 2020

DAVID OKETCH MANYALA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an application for Revision of Sentence in Bondo PMCCR Case No. 1020 of 2019. dated 2.12.2019 by Hon. E.N. Wasike, Senior Resident Magistrate).

RULING

1. The convict herein David Oketch Manyala was sentenced to serve two years imprisonment for the offence of abduction with the intent to confine contrary to section 259 of the Penal Code. He pleaded guilty to the charge and he has not appealed against the plea of guilty. He now seeks for sentence revision. He has been in prison from 2/12/2019.
2. I have considered the application for revision of sentence filed on 14.1.2020.
3. I have also considered the Probation Officer's Report filed on 17.2.2020 and the recommendations therein.
4. I observe that the sentence of 2 years imprisonment imposed on the Applicant/Convict on 2.2.2019 for the offence of abduction with intent to confine contrary to Section 289 of the Penal Code is lawful and lenient as the maximum sentence is seven years imprisonment upon conviction.
5. However, the convict pleaded guilty to the charge and in his mitigation he stated that he did not have ill intentions as he was helping the orphaned girl to get out of suffering as she was being mistreated by her Aunt. Following this mitigation the trial Court sentenced him to serve 2 years imprisonment.
6. The victim was reached and she claims, according to the Probation Officer's Report, that the Convict did nothing wrong as she is the one who sought the convict's help to get employed as a house help. She is a total orphan living with guardians. She is of school going age.
7. The Convict is aged 46 years and a neighbour of the victim. He is married to two wives and has 5 children. He is a mason and is a first offender. He is remorseful and the family of the victim are willing to forgive him. The victim is aged 18 years. The community view the convict as a disciplined person. He has no discipline issues in prison.
8. Having considered all the above, I exercise discretion and Order that the convict David Oketch Manyala shall be released from Prison to serve 6 months' Probation to be guided and counselled from the date of his release from Prison.
9. The 2 years imprisonment imposed on him though lawful and lenient is vacated unless he breaches Probationary terms in which case he shall be re-arrested and send back to prison to complete sentence.
10. Orders accordingly.

Dated, Signed and Delivered at Siaya this 18th day of February, 2020.

R.E. ABURILI

JUDGE