

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL APPEAL NO. 83 OF 2017

(CORAM: R. E. ABURILI - J.)

JOANES OTIENO AOR.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Appeal from the judgment, conviction and sentence in Ukwala Principal Magistrate Court Case No. 137 of 2017 dated 24.8.2017 by Hon. G. Adhiambo, Senior Resident Magistrate)

RESENTENCING VIA SKYPE

1. Judgment in this appeal was delivered on 20th January 2020, dismissing the appeal against conviction. I ordered for a Pre-resentencing Report which was noted on 24/2/2020 but the Probation Officer was unable to interview the inmate and other relevant persons including the victims of the offence. Due to the Covid 19 situation, the probation officer may not access the relevant persons for interviews.
2. Having considered the circumstances under which the offence was committed and as mitigated by the appellant and the probation - presentence report filed in the lower court, filed by Siaya County Probation Officer, on the appellant's antecedents to guide the court on whether the court should interfere with the sentence imposed on the appellant who pleaded for leniency in his mitigation in the lower court as reported by the probation officer that:

“The accusedt is remorseful and he is genuinely sorry for the unfortunate result of his conduct. It is unfortunate that a life was lost and he is genuinely sorry both to the court and the family of the deceased. The appellant is aged 33 years. He is married with 3 children. He is a young family and he is the sole bread winner the youngest child is 6 months old. May you consider that this young family deserves a chance to be looked after? The accused has been very compliant with attending court and he has personally undertaken to be a good citizen. As you met out your sentence may you consider a non-custodial sentence? Because even as much as he deserves to be punished as an offender his well-being and future should be considered.

3. I hereby order that the appellant is resented to the period already served in prison.
4. Therefore, unless otherwise lawfully held, the appellant **Joanes Otieno Aor** is hereby set at liberty.

Orders accordingly.

Dated, signed and Delivered at Siaya, this 5th Day of May, 2020 via skype due to Covid 19 situation.

R.E. ABURILI

JUDGE