

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

BUNGOMA CRIMINAL REVISION NO. 70 OF 2020

(CORAM: HON. JUSTICE R.E. ABURILI)

IAN WEKESA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Application for Revision of sentence in Criminal Case No. 331 of 2020 in the Principal Magistrate's Court at Kimilili dated 27/8/2020 before Hon. D. Ogal, Senior Resident Magistrate)

RULING

1. I have considered the application by the Prosecution counsel, Bungoma dated 3/9/2020 seeking for revision of custodial sentence imposed on the convict Ian Wekesa by Kimili PM's court in Cr. Case No. 331/2020 for the offence of trespass with intent to annoy contrary to **Section 5(1)(a) of the Trespass Act Cap 294 Laws of Kenya**.
2. I observe that the convict pleaded guilty to the charge on 24/8/2020 and that the Plea is unequivocal.
3. He was further convicted on his own Plea of guilty and after the trial court considered the Probation Officer's report, she sentenced the convict to serve 3 months imprisonment. The sentence is lawful and lenient. There is therefore no irregularity in the proceedings, conviction and sentence of the convict. However, on being placed in custody to serve the 3 months imprisonment lawfully imposed, the convict was as is the new norm, tested for covid-19 which results according to the Medical Report as per letter attached dated 16/7/2020 (sic) shows that the results came out this 3/9/2020 showing that he has tested positive for covid-19.
4. The convict is currently held at Bungoma G.K. Prison and the Officer Incharge has written a letter to the ODPP raising concerns that the convict will infect other inmates held at the police station and the police officers besides other members of the public who may come into contact with him and his caregivers.
5. Having considered the above situation, I order as follows: - I revise the 3 months imprisonment imposed on the convict Ian Wekesa vide Kimilili PM's Cr. Case No. 331/2020 and set aside that prison term and substitute it with an order for unconditional discharge and order that the convict Ian Wekesa shall be released for self-quarantine for home-based care at his own home with the support and guidance of Public Health officials from Bungoma County, Kimilili Sub County.
6. Orders accordingly.

File closed.

Dated, signed and Delivered at Siaya this 3rd Day of September 2020

R.E. ABURILI

JUDGE