

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

MISC. CRIMINAL APPLICATION NO. 48 OF 2020

MICHAEL JUMA OCHIENG.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Application for Revision of sentence in Criminal Case No. 295 of 2019 in the Principal Magistrate's Court at Siaya and HCCRA No. 62 of 2019 in the High Court at Siaya dated 20.7.2020 before Hon. Lady Justice R.E. Aburili, J)

RULING

1. The Notice of Motion dated 5/8/2020 seeks for the main prayer namely, leave to file an appeal out of time and Sentence Review to non-custodial from custodial Sentence of 10 years imprisonment.
2. The Law - Sections 362 - 364 of the Criminal Procedure Code prohibits an appeal and sentence Revision being considered simultaneously. The applicant/convict must elect which prayer he wishes to be considered.
3. Further, the attached document only complains of the sentence and pleads for review of custodial sentence claiming that the convict is now reformed and has attended various Theological programs and lessons every weekend in prison. He pleads for leniency.
4. He was sentenced to serve 10 years imprisonment for grievous harm, upon conviction on 5/2/2020.
5. I have considered the dual yet mixed up application. I find no substance in the application for Sentence Revision which is mixed up with leave to appeal out of time. The same is hereby dismissed.
6. File closed.
7. Orders accordingly.

Date, signed and Delivered at Siaya this 1st Day of September 2020.

R.E. ABURILI

JUDGE