

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL REVISION CASE NO. 61 OF 2019

JOSEPH ODHIAMBO ASIANGO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an application for revision of sentence in Ukwala PMCRC NO. 272 of 2019 dated 11.7.2019 before Hon. C.N. Sindani – SRM)

SENTENCE REVISION RULING

1. The Convict **Joseph Odhiambo Asanga** was on 11.7.2019 convicted and sentenced by **Ukwala SRM in Cr. Case No. 272 of 2019** for the offence of assault causing actual bodily harm. He pleaded guilty to the charge and he has not appealed against conviction and sentence.
2. He has filed this Revision application seeking for sentence review of a fine of KShs.50,000/= in default to serve one year in prison.
3. I have considered the application for revision dated 30.9.2019. The Convict is 26 years old mechanic and married with two young children. He feeds for them and says he is remorseful for the offence and pleads for leniency and a non-custodial sentence. The Complainant was 23 years old and she was injured by slaps on her and the degree of injury was assessed as harm. In his mitigation the convict stated that he accepted his mistakes. He will not repeat again. The trial Court considered the mitigations before sentencing him.
4. I have considered the Probation Officer's Report filed on 11.11.2019. The Convict and Complainant are neighbors. He is a Boda Boda operator who pays rent for his family which is suffering as rent arrears accumulates.
5. The Victim was not reached but the Probation Officer received information that she had forgiven the convict and even visited him twice in prison. The Probation Officer is of the view that Community Service is suitable for the offender Convict.
6. Taking into account all the above circumstances, although the sentence meted out is lawful, taking into account the socio-economic circumstances of the Convict, he cannot raise KShs.50,000/= fine and as there is room for reconciliation with the Complainant who was a neighbour and with the convict being remorseful, I exercise discretion and set aside the fine of KShs.50,000 in default 12 months imprisonment and substitute it with the Order that the Convict Joseph Odhiambo Asianga shall be released from Prison to serve unpaid Community Service at Got Osimbo Dispensary under supervision of M/s. Rhoda Wanyonyi, Probation Officer, Ugunja for a period upto 11.3.2020 from the date of his release from Prison.
7. Orders accordingly.

Dated, Signed and Delivered at Siaya this 11th day of November, 2019.

R.E. ABURILI

JUDGE