

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL REVISION NO. 60 OF 2019

NICHOLAS OWUOR OBIERO.....APPLICANT

VERSUS

REPUBLICRESPONDENT

(Being an application for Revision of Sentence dated 8.8.2019 in Ukwala PMCR Case No. 315 of 2019 Hon C. Agutu SRM)

RULING

1. The Applicant/Convict **Nicholas Owuor Obiero** was on 8.8.2019 convicted and sentenced to serve three(3) years imprisonment vide Ukwala P.M's Court Cr. Case No. 315 of 2019, for the offence of **Breaking into a building and committing a felony contrary to Section 306(a) of the Penal Code**. He also faced the alternative charge of **handling stolen goods contrary to section 322(1)(2) of the Penal Code**.
2. The Complainant is Duncan Omondi Owuor. The Convict pleaded guilty and the stolen items as recovered were restored to the Complainant. They were valued at KShs.20,000/-.
3. The Convict has not appealed against his conviction and sentence but has applied for sentence revision.
4. I have considered the application for revision of sentence and the Probation Officer's Report filed in Court on 11.11.2019.
5. The Applicant/Convict says that he is remorseful for the offence as he was given the items by his friend and promises not to keep bad company. That he is sickling and on multiple TB, HIV drugs and he has undergone surgery twice. He pleads for non-custodial sentence as his condition is worsening.
6. The Probation Report confirms the above position. He is 32 years and has been ailing since he was imprisoned. His wife died of HIV Aids and left him with a child aged 6 years. He is said to be very sick with a surgical wound scheduled for another surgery on 18.11.2019. That he can be rehabilitated. He regrets the offence. He is a first offender.
7. The sentence meted out is lawful and lenient. However, the Convict pleaded guilty and saved Court's time and the public of resources of bringing witnesses to Court. The stolen items were recovered and restored to the owner.
8. The Convict is remorseful and is ailing. His continued incarceration might turn out to be a death sentence. He has served about 3 months in prison. He is a first offender.
9. I exercise discretion and order that the Convict Nicholas Owuor Obiero shall be released from Prison on account of his very poor health. He is conditionally discharged not to reoffend for the next one year and in breach, he will be rearrested and sent to prison to serve the original three years imprisonment.
10. Orders accordingly.

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

R. E. ABURILI

JUDGE