



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT SIAYA**  
**CRIMINAL REVISION NO. 85 OF 2018**

**(ROBBERY WITH VIOLENCE & HANDLING STOLEN PROPERTY)**

**(CORAM: R. E. ABURILI – J.)**

RASTO EVANS OGOLLA ..... APPLICANT

VERSUS

REPUBLIC ..... RESPONDENT

*(Being an application for Revision of sentence dated 24.6.2016 in Criminal Case No. 431 of 2015 in Bondo Law Court before Hon. M. Obiero – SPM)*

**JUDGMENT**

1. On 2.2.2018 the Appellant **Rasto Evans Ogolla's appeal No. 136 of 2016** was withdrawn from Court by the appellant herein and the order recorded by Hon Justice D. Majanja, on the application of the Appellant as follows:

*“court: That the appeal is withdrawn on the Appellant's own application.*

*Hon.D.S. Majanja*

*Judge*

*2/2/2018”*

2. Upon withdrawal of the appeal, the convict now seeks vide this Revision Application, for revision of the sentence meted out on him upon being found guilty of the offence of handling stolen property contrary to Section 322(2) of the Penal Code, by Bondo P.M's Court on 24.4.2016 and sentenced to serve 5 years imprisonment, by Hon. M. Obiero, P.M.

3. Initially, the convict was charged with the principal offence of **Robbery with violence C/Sec. 296(2) of the Penal Code** for which he was acquitted for lack of proof and instead, the Court found him guilty of the alternative charge of handling stolen property **Contrary Section 322 of the Penal Code** and sentenced him accordingly. He denied both charges. Upon conviction and sentence, he appealed to this Court vide **HCRA 136/2016** which he withdrew on 2.2.2018 before Hon. Majanja – J, during the service week. In his presentation made on 2.2.2018 before Hon. Majanja, the convict stated.

*“I wish the Court to consider reducing the sentence. I have reformed. I committed the offence and I pray for forgiveness. I have stayed in prison for 3 years.”*

4. The Prosecution represented by Miss Odumba then submitted that:

*“The Prosecution proved his case. I pray for the sentence to be enhanced in view of the circumstances.”*

5. It was upon the Appellant/convict realizing that the Prosecution were seeking enhancement of sentence that he stated:

*“I do not wish to proceed with appeal. I wish to withdraw.”*

6. The learned judge then made an order that the appeal is marked as withdrawn on the Appellant's own application.

7. According to the Prison's records availed to court, the convict is to complete his sentence on 23/6/2021. No doubt, with the Applicant/Convict withdrawing his appeal and conceding that he committed the offence only on appeal, the trial Magistrate made no error in convicting the Applicant with the offence of handling stolen property.

8. In his mitigation, the Applicant/Convict only stated "***I do pray for leniency.***" Which mitigation the trial Court considered before meting out sentence. The trial Court also considered all the circumstances of the case and stated that "***the phone was stolen from the Complainant by armed robbers who also inflicted injuries on him. It is also clear from the evidence in the trial court that the convict was among the cartel of robbers and his duty appears to assist in disposal of items stolen by the robbers. This is a serious issue and must be discouraged at all costs. As such, the offence calls for a deterrent sentence. Based on the foregoing, I do sentence the Accused to serve five (5) years imprisonment. Right of Appeal explained. Obiero, PM 24.6.2016.***"

9. The phone which was stolen during the robbery incident was recovered and returned to the owner.

10. I have considered the application for revision of the remainder of the sentence. I have also considered the order of 2.2.2018 by Hon. Majanja – J., wherein it is stated that the Appellant to serve the remainder of the sentence upon his withdrawing of the appeal. I have considered the application for revision by the convict who was charged in Court and pleaded to the charges in 2015 May 25<sup>th</sup>. I have given consideration to the fact that the convict pleaded not guilty to the charges and that it took the Prosecution Public resources and time to line up witness to testify against the convict to prove his guilt and the trial one year to come to an end. The convict was released on bond but he never met the bail and bond terms hence he remained in custody throughout the trial. I also note that the stolen phone was recovered albeit other stolen items were never recovered.

11. The convict denied committing the offence but on appeal, he was apprehensive that if he lost out on the appeal then he risked being handed a much longer sentence.

12. The Complainant lady was robbed at gunpoint and that is how her phone and other valuables were taken away. She risked losing her life and the life of her 2 Children at the hands of the ruthless robbers.

13. Albeit the convict was acquitted of the offence of robbery with violence and as usual, the State never appealed against that acquittal, and the convict later having admitted that he handled the stolen property, it was upon him to attempt to explain at this stage how he came to possess the Complainant's phone. The convict in my view is a dangerous human being who deserves to suffer banishment from society for he is a danger to others in society. He must demonstrate reform before being allowed back into society. He is lucky to have been sentence to serve 5 years imprisonment and which sentence he has nearly served half thereof. It is lawful and lenient sentence in my view since the maximum sentence for handling stolen property is 14 years.

14. The situation where this Court would interfere with the discretion of a trial Court on the issue of sentence are now settled. It must be shown that the sentence is manifestly excessive in view of the circumstances of the case. In revision, the applicant must show that the sentence was irregular or illegal or that there was impropriety in the proceedings. The value of the stolen property namely, a phone found in possession of the convict was KShs.70,000/= which the convict was selling at KShs.4,500/=.

15. The sentence having been lawful and lenient, I find no impropriety, illegality or irregularity on the part of the trial Court. It was in my humble view commensurate with the offence and does not meet the threshold for revision as stipulated in **Section 362 of the Criminal Procedure Code**. There are no compelling reasons why this Court should interfere with that sentence.

16. Furthermore, the applicant is a very dishonest person as evident from the record. By a letter from the **Siaya G.K. Prison Ref SYA/384/1** following a signal from OCP Kisumu Medium received in Court on 2.4.2018, the Applicant/Convict even claimed that he had been acquitted on 2.2.2018 by Hon. Justice Majanja vide his **Appeal No. 136/2016**. That is what he alleged to the prison authorities. The Applicant is not genuinely reformed in my humble view as he knew or ought to have known that he withdrew his appeal after the Prosecution sought for enhancement of the sentence. For those reasons, I find no compelling and persuasive reasons for this Court to review lawful and proper sentence meted out on the convict, and which sentence is proportionate to the crime that he committed and denied. The Prosecution were taken through long motions of proving his guilt beyond reasonable doubt which they did.

**17. Accordingly, I find and hold that the application for revision of sentence is devoid of merit and the same is hereby dismissed.**

**Dated, signed and delivered in open court at Siaya this 13<sup>th</sup> day of June, 2018.**

**R. E. ABURILI**

**JUDGE**

**In the presence of:**

Miss Odumba Prosecution Counsel for the State

The applicant convict present in person

Court Assistant: Brenda