



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT SIAYA**

**HC. CR. REV. NO. 158 OF 2018**

**(CORAM: R. E. ABURILI - J.)**

**M A O.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Being an appeal against the sentence dated 24.09.2018 in*

*Criminal Case No. 567 of 2018 in UKWALA Law*

*Court before Hon. G. Adhiambo - SRM)*

**RULING ON SENTENCE REVIEW**

The Applicant, **M A O** is aged 38 years. She was convicted and sentenced to a fine of Kshs. 83,000/= in default to serve 6 months and 45 days in prison for the offence of being found in possession of *chang'aa* contrary to the **provisions of the Liquor Act**; vide Ukwala SRM Cr. Case No. 567 of 2018. She has not challenged the conviction and sentence.

She however, pleads with this Court for revision of her sentence for reasons that she is a first offender, she is a mother of 4 children who solely depend on her, she is sickling and HIV positive living on ARVs hence jail term will harm her health.

On 30/10/2018, I ordered for a sentence review report from the Probation Officer, Siaya. The same was filed on 12/10/2018 by Rhoda Wanyonyi, Probation Officer.

According to the Probation Officer's Report, the convict was sentenced on 24/9/2018 and is to end her sentence on 23/2/2019.

She is a widow to the Late Joseph Omondi. She has 4 children. She is HIV positive living on ARVs and sickly.

The convict needs economic empowerment and reintegration with guidance and counseling on strategic interventions required for her. She is said to be humble and hardworking person committed to her family of 4 children and her elderly grandmother. Her husband died in 2007. She is remorseful and regrets the offence.

I have considered the Probation Officer's Sentence Review Report. I observe that the conviction and sentence meted out on the Convict/Applicant are not challenged. However, the Convict appears to be a woman of straw and therefore raising Kshs. 83,000/= fine is a pipedreams for her.

Nevertheless, the Applicant must know that there are alternative legal businesses which she can do to eke a living and fend for her dependants and seek medical treatment for her HIV/AIDS status.

**Therefore, I shall only consider the plea in line with Prison Congestion Policy and order that the Applicant/Convict M A O shall be released unless otherwise lawfully held, to serve Community Service at Simenya Health Centre where she can also obtain her medication. She will serve for a period of three months from the date of her release from prison.**

**Orders accordingly.**

*Dated, Signed and Delivered at SIAYA this 15<sup>th</sup> Day of October 2018.*

**R.E. ABURILI**

**JUDGE**

*In the presence of:*

**Mr. Okach:** Prosecution Counsel for the State

**Millicent Atieno Oluoch:** Applicant in person (*present*)

**Court Assistant:** Brenda, Modestar