



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

HC. CR. REV. NO. 147 OF 2018

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

STEPHEN OTIENO OLITA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an application for revision of sentence dated 15.01.2018 in Criminal Case No. 13 of 2018 at BONDO Law Courts before Hon. M. Obiero - PM)

RULING ON SENTENCE REVISION

1. The Applicant/Convict **Stephen Otieno Olita** was on 15/1/2018 convicted by the PM's court at Bondo vide Bondo PM Cr. Case No. 13/2018 and sentenced to serve 20 months for the offence of stealing contrary to **Section 275 of the Penal Code**. He did not appeal against the conviction or sentence.
2. On 14/8/2018 he filed an application seeking for revision of his sentence only. On 31/8/2018, I directed that a Sentence Review Report be filed by the County Probation Officer, Siaya. The said Report was filed on 2/10/2018 and this court has perused the said report prepared by Mr. John Oyare Oyieko, Probation Officer.
3. The convict in his application claims that he is a first offender with no previous record. Further, that he was remorseful and that he is reformed. He claims to be the sole breadwinner for his family and feeds for his 75 year old grandmother who is sickly and needs support. He pleads for a non-custodial sentence.
4. In the detailed Sentence Review Report dated 2/10/2018 signed by the Probation Officer, it is reported that the convict is aged 26 years old and that he stole the goods named in the charge sheet namely; a laptop, techno mobile phone, Sony Camera, brown jacket, grey bag, 25 Kgs assorted nails, 1 sufuria, a torch, 3 blankets, cash. Kshs. 3,000/= all valued at Ksh. 60,900/= the property of Alfred Nyawara Awili.
5. The convict admits the offence but blames his brother in-law who was his co-accused as the person who came visiting the convict carrying the stolen items from his (brother in-law's employer). That the convict's role was accommodating his brother in-law and storing the stolen items for the brother in-law. He admitted handling stolen property and was convicted on his own plea of guilty and sentenced. He is married with 2 children.
6. The convict does not take alcohol and that he has no problem with the community which is ready to accept him back as he was a person of good conduct prior to the incident leading to the case herein. His parents died. He is a mechanic at Usenge.
7. The convict is said to require help to understand the laws in society and to be counselled and guided on how to relate well with his neighbours and to respect private property.
8. The Probation Officer recommends that the convict be considered for a non-custodial sentence and to serve such sentence at Osieko Secondary School for the period the Court may deem desirable.
9. I had the opportunity to see the convict in court. I note that the convict pleaded guilty and some of the property stolen recovered from his house. The conviction and sentence imposed on the applicant is sound and lawful and it is not challenged. There is no contrary view that his biggest offence was that of handling stolen property which his brother in-law brought into his custody. He should have questioned his brother in-law on ownership of the property.
10. He is however a first offender, remorseful and accepts his mistakes and his readiness to live in harmony with the community and to respect other peoples' property. He has a young family and is engaged in useful gainful employment as a mechanic.

11. In my view, the convict is a young adult who needs and deserves to be assisted and guided to live responsibly in the community to respect other people's property and to benefit from his sweat in a legal way. He can work and eke a decent living and support his young family. He is old enough to detect and detest peer pressures and criminal content in any action. He should take responsibility for his own actions.

12. Now that he regrets the offence and knows that crime does not pay, he should be given an opportunity to serve the remainder of the sentence in the community, to integrate with the community to earn their trust.

13. Accordingly, I exercise my discretion and allow the application and order that the convict Stephen Otieno Olita shall serve the remainder of his prison term outside prison.

14. The prison sentence is hereby set aside and substituted with community service, unpaid work at Osieko Secondary School for a period of forty Five (45) days from the date of his release from prison unless otherwise lawfully held, and be under close supervision of the Probation Officer, Siaya County.

15. Orders accordingly.

Dated, Signed and Delivered at SIAYA this 18th Day of October 2018.

R.E. ABURILI

JUDGE

In the presence of:

Mr. Okach: Senior Principal Prosecution Counsel for the State

Stephen Otieno Olita: Applicant in person (present)

Court Assistant: Brenda and Modester