



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT SIAYA**

**HC. REV. NO. 148 OF 2018**

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

**JOASH OCHIENG ONGAYO.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Being an Appeal against the Conviction and Sentence dated 08.08.2018 in Criminal Case No. 304 of 2017 at Siaya Law Courts)*

*And*

*(A Subsequent Ruling that was made on 26.09.2018 at Siaya High Court before Hon. Lady Justice R.E. Aburili, Judge)*

**RULING**

1. This court did on 26/9/2018 make a ruling wherein it ordered the convict to tender in a written and oral apology to the complainants and that he undertakes to pay the complainants Kshs. 20,000/= to cater for their medical treatment to be paid within 3 months.
2. The convict has tendered an oral and written apology and the court has attempted medication and reconciliation to no avail as the Complainant Philister who came to court is unwilling to accept any apology.
3. There is on record a Probation Officer's Report which is positive of the convict I have no reason why I should not accord the convict a chance to serve a non-custodial sentence in sentence review as the sentence he is serving is short to wit, 18months imprisonment, owing to the strong mitigating factors on record. Accordingly, I reiterate my earlier ruling and set aside the custodial sentence imposed on him and substitute it with an order that he shall serve the remainder of his sentence on probation under the supervision of Siaya County Probation Officer. The Kshs. 20,000/= earlier ordered shall be paid to both complainants receiving Kshs. 10,000/= within the next three months.

Orders accordingly.

*Dated, Signed and Delivered at SIAYA this 6<sup>th</sup> Day of November 2018.*

**R.E. ABURILI**

**JUDGE**