

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

HC. CR. REV. NO. 89 OF 2018

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

MOSES OTIENO OWITI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal against the sentence dated 16.12.2017 in Criminal Case No. 581 of 2017 in Siaya Law Court before Hon. J. Ongo'ondo - PM)

And

(A Subsequent Ruling on Sentence Review against the sentence dated 31.08.2018 in High Court Rev. No. 89 of 2018 in Siaya High Court before Hon. Justice R.E. Aburili, Judge)

RULING ON SENTENCE REVIEW

I have considered the Application for Sentence Review, the mitigation put forth and the social inquiry report filed by the Siaya County Probation Officer dated 22/10/2018. I note that the applicant pleaded guilty to the charge of **breaking in a building and committing a Felony** contrary to **Sector 306(a) of the Penal Code**. He was sentenced to serve 4 years imprisonment by the PM's court at Siaya in Cr. Case No. 581 of 2017 on 23/12/2017. The sentence is to end on 9/8/2020.

The Applicant claims that he is the sole breadwinner for his family including three children and his old father as his mother died 8 years ago. He claims that sentence was excessive.

According to the Probation Officer's report, the convict has good conduct but this changed after he got married when he got more responsibilities. He served as house servant.

The Complainant/Victim recovered his property hence he has no ill feelings. The community has no issue with the convict and his family welcome him back home albeit his wife left the matrimonial home because of hardship following the incarceration of the Applicant.

He requires guidance and counselling to address his needs and some training to provide him with a skill. He is aged 30 years.

In short, the convict is suitable for a non-custodial sentence. As he will require counselling and training in some skills, I find the application merited.

The sentence of 4 years imprisonment though lawful but for a first offender who pleaded guilty and willing to reform and live in harmony with the rest of the people in the society, a social inquiry report should have been ordered.

I set aside the said sentence of 4years imprisonment and substitute it with an order that the convict **Moses Otieno Owiti** shall serve one year probation under the close supervision of the Siaya County Probation Officer effective the date of his release from prison upon service of this order on Prison Authorities.

File closed.

Dated, Signed and Delivered at SIAYA this 7th day of November 2018.

R.E. ABURILI

JUDGE