



**REPUBLIC OF KENYA**

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

**HC. REV. NO. 4 OF 2018**

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

**SAMUEL ODHIAMBO OTINA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

***(Being an Appeal against the Conviction and Sentence dated 08.08.2018 in Criminal Case No. 1041 of 2016 at Bondo Law Courts before Hon. E.N. Wasike, SRM)***

**RULING**

1. The convict **Samuel Odhiambo Otina** was on 9/1/2018 convicted and sentenced to serve 2 years imprisonment for the offence of setting fire to cultivated crops contrary to **Section 334(a) of the Penal Code**. He has been in prison for over 11 months and seeks for revision of sentence.
2. In his mitigation which he also stated before the trial court, he says that he is a first offender, sole breadwinner of 4 children, a wife and disabled father as his mother died over 20 years ago
3. He was an employee of a parastatal and jail term has cost him his job and benefits lost yet he had worked for more than 10 years.
4. He is remorseful and regrets the incident.
5. Regrettably, the application for revision which was filed on 31/1/2018 was only brought to my attention this afternoon.
6. I have considered the application for revision of sentence of 2 years. The section under which the applicant was charged provides for maximum sentence of 14 years upon conviction as the offence is a felony. The convict was given 2 years owing to the touchy mitigations. The trial court was therefore more than lenient in in meting out sentence which is lawful. The conviction is not challenged and neither is the sentence meted out.
7. The property destroyed is worth Kshs. 2,564,000. It is substantial. The complainant lost his crops which he had taken time to cultivate to reap benefits from.
8. However, the convict too lost his job as a result of his imprisonment hence he never derived any benefit from his criminal activity and which he regrets. He has learnt his lesson. He has reformed in prison.
9. He should benefit from the prison decongestion policy as the Probation report ordered on 16/3/2018 has never been availed.
10. In the premises, I exercise my discretion and revise the sentence meted out on the convict and order that the remainder of the convict's sentence be served on probation to be supervised by Siaya County Probation from date of release from prison.

***Dated, Signed and Delivered at SIAYA this 21<sup>st</sup> Day of November 2018.***

**R.E. ABURILI**

**JUDGE**