

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO. 680 OF 2018

SARAH AKINYI ODIMA.....APPLICANT.

VERSUS

REPUBLIC.....RESPONDENT.

RULING.

1. Sarah Akinyi Odima filed the present application by way of a Notice of Motion dated 12th June, 2018 praying that the court reviews her sentence on the grounds that: (i) she was a first offender, (ii) she was truly remorseful and regrets what she did, (iii) she had served a period of more than one year and gained knowledge in spiritual theology, industrial skills and computer education, (iv) she was willing to abide by, and continue with, building the society if given the opportunity, (v) she had a permanent residence where she could be traced, and (vi) she was innovative and talented and staying behind bars for three years was harsh. She urged the court to grant an option of non-custodial sentence. The application was supported by a supporting affidavit in which she reiterated the issues raised in the application.

2. The Applicant submitted a number of certificates she had attained during her stay at the prison alongside a report from the prison service dated 9th October, 2018 which stated that she had learnt skills during her incarceration which would assist her once she left prison.

3. Ms. Atina for the Respondent did not oppose the application. She submitted that the Applicant was remorseful for what she did and she wished to go back to society where she could be useful. She stated that she had learnt several skills. She submitted that the Applicant had been sentenced to a maximum sentence of 3 years but since she had been in custody for 1 year and 3 months she urged the court to reduce her sentence independently.

4. The Applicant was sentenced in three counts to pay fines of Kshs. 100,000/- in default to serve one year imprisonment in each of the counts. The default sentences were to run consecutively. The sentence was passed on 28th July, 2017 and she has therefore served one year three months of the sentence.

5. It was submitted that the Applicant's co-accused, one Leonard Mushenga Ochoka had his sentence revised and ordered to serve community service for 14 months. While the court has not had an opportunity to see the order releasing the Applicant's co-accused, the assertion was not contested. The principle of uniformity would demand that the same hand be extended to the Applicant. It would serve the ends of justice. This is more informed by the fact that the Applicant is a first offender and has obviously taken steps in prison to better herself.

6. I accordingly set aside the outstanding sentence against the Applicant and in its place order that the Applicant undertakes community service, under Section 3 of the Community Service Orders Act, 1998, for a period of six months. The substitution of the sentence shall be subject to the establishment of the Applicant's residence and a suitable location to undertake her community service by a Probation officer. Mention on 22.11.2018 for this purpose.

DATED and DELIVERED 15TH DAY OF NOVEMBER, 2018

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. Applicant present in person

2. Mr. Miiri for the Respondent