

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

HC. REV. NO. 156 OF 2018

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

WYCLIFFE OTIENO OGONJI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Appeal seeking Sentence Revision against judgment delivered in 8/6/2016 in Criminal Case No. 1047 of 2014 at Bondo Law Courts, PM's Court.)

RULING ON REVISION

1. On 8/6/2016, the convict **Wycliffe Otieno Ogonji** was convicted and sentenced by Bondo PM Cr. Case No. 1047/2014 for the offence of Manslaughter contrary to **Section 202 of the Penal Code**. He was sentenced to serve 5 years.
2. He has not challenged his conviction and sentence which were sound and lawful considering that precious life was lost.
3. Maximum sentence for a conviction for the offence of Manslaughter is life imprisonment hence 5 years is too lenient.
4. The death of Fredrick Odhiambo Aganga occurred after a sight in a *Disco Matanga*. This is a very common phenomena in this part of Kenya. He is remorseful and has acquired several skills while in prison. He has a young family of a wife and 3 children which depends on him. He is aged 33 years. Those interviewed consider him to be a reasonable person of good conduct. These include his family members, and prison officers. He does not abuse drugs.
5. The convict takes full responsibility for the offence.
6. The Probation Officer recommends non-custodial sentence of unpaid work at Tanga Primary School for the period that the court may deem fit. The convict is also said to be living positively.

The report which is undated is filed on 1/11/2018.
7. There is however no indication that the Probation Officer spoke to or interviewed the victim's family members and what their attitude was towards the convict since the convict alleges without proof that his family and that of the victim have reconciled.
8. Nonetheless, considering that the court has served a substantial part of his jail term and his torchy mitigations, and the positive report on his antedecedents as detailed by the Mr. John Oyare Oyieko, Probation Officer Siaya, I would exercise my discretion and accord the convict an opportunity to serve a non-custodial sentence to enable him reconcile with the society which he wronged through recklessness.
9. In the premises, I hereby allow the application for sentence review. I order that the convict Wycliffe Otieno Ogonji shall serve the remainder of his prison term on Probation under the close supervision of Siaya County Probation Officer for guidance and counselling for him to tame his anger and learn to live and let live.
10. Those shall be orders of this court.

Dated, Signed and Delivered at SIAYA this 21st Day of November 2018.

R.E. ABURILI

JUDGE