

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL REVISION NO. E035 OF 2021

CORAM: R.E. ABURILI, J

ALFRED ODHIAMBO ACHAR.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Application for Revision of sentence against sentence in Bondo PM Court's Criminal Case No. 114 of 2016 on 16/6/2017

by Hon. M.O. Obiero, Principal Magistrate AND Siaya HC Criminal Appeal No. 23 of 2018 dated 5/5/2020)

RULING

1. Alfred Odhiambo Ochar was convicted of the offence of Manslaughter contrary to Section 2020 as read with Section 205 of the Penal Code.
2. He was sentenced to serve 7 years imprisonment vide Bondo PM Cr. Case No. 114 of 2016. He appealed to this court vide HCRA 23/2018 which appeal was dismissed vide judgment delivered on 5/5/2020. He now seeks for revision of that sentence for prison decongestion.
3. I have considered the request through a Probation Officer's Sentence Review Report. I find the application devoid of any legal basis and merit.
4. The law does not permit revision of sentence and an appeal, in the same matter.
5. This court is *functus officio*, having pronounced itself on appeal and cannot revise sentence through a revision or review exercise. The matter is outside purview of Section 3(1) of the Community Service Orders Act, considering that the maximum sentence for manslaughter is life imprisonment.
6. The discretion exercised by the trial court as upheld by this court on appeal cannot be subjected to a further revision in the circumstances of this case.
7. Accordingly, this request is declined and dismissed.
8. File closed.
9. Orders accordingly.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 30TH DAY OF JUNE, 2021

R.E. ABURILI

JUDGE