

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CRIMINAL REVISION E065 OF 2021

DAVID ODHIAMBO OMOLO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Revision Application from the judgment, conviction and sentence in Bondo P.M's Cr. C. 857 of 2013

by Hon. C.A. Kutwa, KSM HCCRA 45 of 2015, Siaya HCCRA 83 of 2015

dated 8.5.2020, by Hon. J. Makau – J.)

RULING

1. The Convict **David Odhiambo Omolo** was convicted for the offence of **Manslaughter contrary to section 202 as read with Section 205 of the Penal Code** vide Bondo Principal Magistrate's Court Criminal Case Number 857 of 2013 by Hon. C.A. Kutwa, P.M. He was sentenced to serve twenty years imprisonment on 4.12.2014. He appealed vide Kisumu HCCRA 45 of 2015 which was transferred to Siaya High Court and vide Siaya HCCRA 83 of 2015 Hon. J. Makau – J., the appeal against conviction was dismissed and sentence reduced from 20 years imprisonment to 10 years imprisonment vide judgment delivered on 15.3.2016.

2. The Convict has not challenged that decision. He is now before this court for Revision of Sentence and the Probation Officer's Report filed on 11.6.2021 by Euphemia Kidwoli says that he is remorseful and willing to serve non-custodial sentence.

3. In the view of this court, the probation report is a mockery of justice and legal process. This court in a merit appeal reduced prison term imposed on the convict from 20 years to ten (10) years. The court therefore lacks jurisdiction to further review that sentence by whatever name the application or request is given.

4. Prison decongestion under **Section 3(1) of the Community Service Order** is only applicable where the offence charged or for which upon conviction, the convict is liable to imprisonment up to three years imprisonment. The punishment for Manslaughter is up to life imprisonment. The trial Court exercised discretion and sentenced the Convict to 20 years which term was further reduced by this court Hon. Justice Makau – J. to ten years imprisonment. That being the case, I find no merit or legality in this matter returning to this court for sentence Review.

5. The request is declined and dismissed.

6. Filed Closed.

7. Orders accordingly.

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

R.E. ABURILI

JUDGE