



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISUMU**

**CRIMINAL PETITION NO 79 OF 2020**

**JACKSON OMONDI NYABWA.....PETITIONER**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

1. The Petitioner herein was charged and tried of the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. However, he was sentenced on the lesser offence of manslaughter and sentenced to serve twenty (20) years imprisonment.
2. Being dissatisfied with the said decision, the Petitioner lodged an Appeal in the Court of Appeal **Kisumu Criminal Appeal No 391 of 2010** where the Court affirmed the conviction and sentence and dismissed his Appeal in its entirety.
3. On 7<sup>th</sup> September 2020 the Petitioner filed this application for review of the sentence. In his affidavit that he swore in support of his application, he stated that he had ulcers and had served a lengthy sentence and wished to argue out his mitigation for possibility of this court considering reducing his sentence.
4. In his Written Submissions, he reiterated his aforesaid averments and asserted that although he had served ten (10) years of his sentence, he had been behind bars for eighteen (18) years. He submitted that the years he spent in remand were not considered at the time of sentencing.
5. He contended that he had undertaken various reformation programmes in panel beating grade 2, spray grade 3, welding grade 2 and mechanics grade 3 which would enable him open up a workshop in the aforementioned fields and earn his living without indulging in crime. He added that he had now professed Christianity and was an active member in church hence had acquired an upright moral behaviour which he believed would enable him integrate well back to society.
6. He pleaded with this court to consider that he was an orphan who left behind a wife and child who had suffered greatly due to his incarceration. He asserted that he was sickly, a first offender and remorseful of the events that led to the death of the deceased. He did not rely on any decided case in his Petition. He entirely relied on his mitigation.
7. The State opposed the Petitioner's application for review of sentence for the reason that manslaughter was a serious offence and the sentence given by the Trial Court was reasonable in the circumstances. It added that the Petitioner caused the death of a young girl without reason. It added that even if the Petitioner was reformed, carrying the sentence imposed to term was desirable in this case.
8. Reading the Judgement of the Court of Appeal **Kisumu Criminal Appeal No 391 of 2010** (supra) the Court rendered itself as follows:

**“We are satisfied on the recorded evidence that the Appellant attacked Emily and the deceased because the two went to fetch firewood from the fence surrounding their home, that he threatened the young girls with death, chased the deceased, caught up with her and strangled her to death. In our view, the Appellant was lucky that the learned Judge convicted him of the lesser offence of manslaughter. The girl he strangled to death was a total orphan who was being cared for by her relatives. We think the sentence of twenty years imprisonment was, in all the circumstances of the case, justified and we see no reason why we should interfere. The Appellant's appeal wholly fails and we order that it be and is hereby dismissed.”**

9. As the Court of Appeal had already dealt with this matter, this court could not purport to review its decision as the Court of Appeal is higher in hierarchy. The only remedy that was left to the Petitioner herein is to seek recourse at the Court of Appeal on the question of when the computation of his sentence should commence.

**DISPOSITION**

10. For the foregoing reasons, the upshot of this court's decision was that the Petitioner's application for review of the sentence that was filed on 7<sup>th</sup> September 2020 was not merited. His prayer for review of the sentence was unmerited and the same be and is hereby dismissed.

11. It is so ordered.

**DATED and DELIVERED at KISUMU this 24<sup>th</sup> day of September 2021**

**J. KAMAU**

**JUDGE**