



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. E030 OF 2021

(From Original Criminal Case No. 411 of 2006 at Malindi CMs Court)

**THE CONSTITUTION OF KENYA 2010 (SUPERVISORY JURISDICTION AND
PROTECTION FUNDAMENTAL RIGHTS AND FREEDOMS OF AN INDIVIDUAL**

HIGH COURT PRACTICE RULES 2013

AND

IN THE MATTER OF ARTICLE 22 (1) OF THE CONSTITUTION

AND

IN THE MATTER OF ARTICLE 23 (1) OF THE CONSTITUTION

AND

IN THE MATTER OF ARTICLE 19, 20, 21, 22, 23, 24, 25,

27, 28, 48, 50, 258 AND 259 OF THE CONSTITUTION

AND

IN THE MATTER OF SECTION 220 (a) OF THE PENAL CODE

BETWEEN

ALI KIRAO MKARE WANJE..... PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

Coram: Hon. Justice R. Nyakundi

The Petitioner in person

Mr. Mwangi for the state

R U L I N G

The petitioner has moved this Court vide Petition dated 31.3.2021 seeking a relief on review of sentence of 15 years imprisonment for the

offence of attempted murder contrary to Section 220 of the Penal Code.

The review on sentence is expressed to be brought under Article of the Constitution 19, 20, 21, 22, 23, 24, 25, 27, 28, 48 , 50, 258 and 259 of the Constitution.

The petitioner has accurately pointed out that the review on sentence is based on Section 333 (2) of the Criminal Procedure Code which deals with the trial Court taking into account the pre-conviction period spent in remand custody.

From the record, the petitioner aggrieved with the conviction and sentence of 15 years imprisonment preferred an appeal to the first and second appeals Courts. The findings of the two Courts was synonymous that the appeals on conviction and sentence lacked merit. It becomes significant for this Court to consider whether the petitioner's petition pertinent to the Court's Judgment aware of the provisions of Section 333 (2) of the Criminal Procedure Code. The answer to such matters, lean towards this Court to appreciate the proceedings before the trial Court. There is no such record provided to the Court in support of that ground under Section 333 (2) of the Criminal Procedure Code. Those averments remains an assertion in absence of the record. In terms of the Law, it's the record which provides insight into the issue. Leaning towards judicial avoidance of opening a pandoras box in a petition which lacks evidential material, this Court will be slow to interfere with the decision on sentence.

The justiciability of this question raised by the petitioner under Article 50 (6) (a) and (b) of the Constitution is suspect as its entrenched in providing substantial and compelling evidence. That disturbing factor by the petitioner lacks merit as herein aforesaid.

As a consequence, the petition fails, the petitioner's earlier confirmed sentence on appeal carries the day.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 30TH DAY OF DECEMBER 2021

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R. NYAKUNDI

JUDGE

In the presence of:

1. Mr. Mwangi for the State