



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

CRIMINAL REV. NO. 85 OF 2019

TOBIAS OMONDI SIGU.....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

The Ruling is on a Petition for Sentence Review dated 14th November 2019.

1. The Petitioner, **TOBIAS OMONDI SIGU**, stated in the Petition that he was;

“... aggrieved and dissatisfied with the sentence and conviction set upon me of Ten (10) years imprisonment for an offence of rape”

2. He further stated that he had pleaded guilty during the trial.

3. Nonetheless, the Petitioner was of the view that the sentence imposed on him was manifestly harsh and excessive. It was because of that reason that he lodged this Petition, with the hope that the sentence could be reduced or that the Department of Probation and After-Care could intervene.

4. When urging the Petition, Tobias Sigu told this court that he was the sole bread-winner in his entire family, as his siblings are still young, whilst his parents were at an advanced age. He said that the parents, who were peasant farmers, could not manage to cater for their basic needs. It is in those reasons that the Petitioner made a plea to this court, to be lenient to him.

5. In answer to the Petitioner’s quest, Miss Odumba, learned State Counsel faulted the same because it had been brought together with an application for leave to appeal out of time.

6. A perusal of the record confirmed that the Petitioner had also filed a Notice of Motion, seeking leave to appeal out of time.

7. When confronted with that information, the Petitioner said that he did not have any appeal.

8. Of course, the very fact that he was seeking leave to appeal out of time implies that he did not yet have any appeal on record.

9. The Respondent told the Petitioner that it would not oppose the application for leave to appeal out of time.

10. At that stage the Petitioner made it clear to this court that, (because he had pleaded guilty) he was not challenging his conviction. He emphasized that he was requesting this court to forgive him, and to reduce the sentence.

11. In determining the matter before me, I begin by holding that an application for the review of a sentence is inconsistent with an appeal which was challenging both the conviction and the sentence.

12. If a person is challenging his conviction, through an appeal, he is saying that the trial court ought to have acquitted him. He is saying that the conviction ought to be quashed.

13. In the event that the appellate court were to allow the said appeal against the conviction, it would automatically follow that the

sentence would be set aside. It follows that a person who was appealing against his conviction cannot or ought not to lodge a parallel application targeting the reduction of his sentence.

14. Assuming that the person's appeal against conviction was not successful, if the appeal was only against conviction, the person ought not to be allowed to file a separate appeal against the sentence.

15. An appeal ought to embody all the facets of the judgment which the Appellant was challenging.

16. In this Petition, I understand the Petitioner to be saying that he did not wish to lodge an appeal. Accordingly, the Notice of Motion, through which he sought leave to appeal out of time, is hereby dismissed.

17. On the issue of the sentence, I note that pursuant to **Section 3 (3)** of the **Sexual Offences Act**;

“A person guilty of an offence under this section is liable upon conviction to imprisonment for a term which shall not be less than ten years but which may be enhanced to imprisonment for life.”

18. The Petitioner was convicted for the offence of rape contrary to **Section 3 (1)** as read with **Section 3 (3)** of the **Sexual Offences Act**.

19. Accordingly, the prescribed sentence was Imprisonment for a term ranging between 10 years and Life. Therefore, when the learned trial magistrate handed down a sentence of 10 years imprisonment, that is the minimum prescribed sentence.

20. The Petitioner has not demonstrated to this court how the minimum prescribed sentence can be deemed to be either harsh or excessive.

21. He has also failed to persuade the court that there was a lawful process through which the court could disregard the express provisions of the statute which prescribed the sentence, and yet still purport to be handing down a sentence that was in compliance with the law.

22. In the result, I find no merit in the Petition. It is, therefore dismissed.

DATED, SIGNED and DELIVERED at KISUMU

This 29th day of April 2020

FRED A. OCHIENG

JUDGE