

REPUBLIC OF KENYA

IN THE HIGH OF KENYA

AT KISII

CONSTITUTION PETITION NO. 102 OF 2019

BENARD REUTA MASAKE.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

1. **Bernard Reuta Masake**,('the petitioner')in his petition filed on the 11/11/2019 seeks sentence review on grounds that this court exercises its jurisdiction under Article 23 (1) as read with Article 165 of the Constitution to order for a reduction/ review of the 40 years imprisonment. That the court be pleased to consider the five (5) years so far served by the petitioner in prison and rehabilitative programmes undertaken by the petitioner since the occurrence of the offence in 2007.

2. In his supporting affidavit filed in support of the petition he avers that he is currently serving 40 years for the offence of manslaughter and that he has served 5 years. That he was initially charged with the same offence and facts were read to him and he was convicted on his own plea of guilty and sentenced to serve one-year imprisonment. That after the completion of the one-year imprisonment the prosecution appealed against the sentence and the High Court ordered a retrial. After the retrial process the trial court sentenced him to life imprisonment on the 8th June 2011 which was later substituted to 40 years. He has exhausted all his avenues of appeal up to the Court of Appeal.

3. Mr. Otieno for the state asked the court to note that the petitioner is now serving 40 years for manslaughter.

4. The petitioner avers that his appeal was heard by the High Court and the life sentence imposed by the trial court was substituted with 40 years imprisonment. It is his submission that he appealed to the Court of Appeal. I have had the benefit of reading the Court of Appeal judgment his appeal was dismissed. Do I have the jurisdiction to reduce this sentence? It is a Court of equal jurisdiction which sentenced the petitioner to 40 years after considering his appeal. His case does not in my view fall within the category of cases where the High Court can review his sentence or re-sentence him. His appeal has already been heard by the High Court. The Court of appeal noted that he had the benefit of his sentence being reduced from life imprisonment to a term of 40 years in prison and that his mitigation was taken into account by the judge and the issue of re-sentencing did not arise. He cannot return to the High Court for a review or reduction of his sentence.

5. I find that his application has no merit and it is dismissed.

Dated, signed and delivered at Kisii this 11th day of June 2020.

R.E. OUGO

JUDGE

In the presence of:

Petitioner In Person

Mr. Otieno Senior Prosecution Counsel Office of the DPP

Ms Rael Court Assistant.