



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CONSTITUTIONAL PETITION NO. 10 OF 2020

DAVID OTIENO OMOLO.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

(Being a Petition for sentence reduction in Criminal Case No. 1124 of 2018 at Principal Magistrate's Court Bondo in a judgment dated 30/8/2019)

JUDGMENT

1. The Petitioner herein **Daniel Otieno Omollo** was charged with the offence of Manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. He pleaded not guilty. He was found guilty, convicted and sentenced to serve 10 years imprisonment by the Principal Magistrate, Bondo on 30/8/2019 in Bondo PM Cr. Case No. 1124/2018. He claims that he appealed but withdrew the said appeal.

2. In this petition filed on 29/6/2020 the Petitioner/convict seeks for non-custodial sentence and he further prays for reduction of sentence claiming that he is suffering a lot.

3. The Prosecution/Respondent opposes the application and urges the court to dismiss the petition.

4. I have considered the petition filed by the convict and the argument in favour of and against the petition.

5. First and foremost, the petition which is couched to be a constitutional petition does not meet the threshold for a constitutional petition. There is no allegation of violation of the rights of the accused/convict as the sentence of 10 years imprisonment as imposed upon the convict for the offence of Manslaughter is lawful sentence, considering the maximum is life imprisonment.

6. Secondly, sentencing is in the discretion of the trial court and as the Petitioner was not handed mandatory sentence, there can be no claim of unconstitutionality of the sentence imposed.

7. Thirdly, this court has no power to interfere with lawful sentence imposed on the convict who has not appealed. The petition is not sentence revision as contemplated under sections 362 and 364 of the Criminal Procedure Code as read with Article 165(6) and (7) of the Constitution which empower this court to call for records of a court or body subordinate to it, examine them and make appropriate orders to ensure the fair administration of justice.

8. For the above reasons, I find and hold that this petition is misconceived, frivolous, vexatious and an abuse of the court process. The same is found to be devoid of merit. It is accordingly dismissed. This file is closed.

9. Orders accordingly.

Dated, signed and Delivered at Siaya this 27th Day of July 2020

R.E. ABURILI

JUDGE

In the presence of:

The Petitioner in person virtually as he is in Prison

Mr. Okachi Senior Principal Prosecution Counsel in Court for the Respondent State

CA: Brenda and Modestar