

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CRIMINAL PETITION NO. 76 OF 2019

PETER ASIEMA.....PETITIONER

VERSUS

REPUBLICRESPONDENT

RULING ON RE-SENTENCING

1. The petitioner has filed an undated petition seeking for the court to make an order for re-trial in Kakamega Chief Magistrate's Court Criminal Case No. 1339 of 2016 on the grounds that there is new and compelling evidence. The petition is made pursuant to Articles 50 and 23 (1), (3) (a) and (d) of the Constitution of Kenya, 2010. It is supported by the affidavit of the petitioner in which he deposes that he was convicted of the offence of occasioning a person grievous harm contrary to section 234 of the Penal Code and sentenced to serve 10 years imprisonment. That his appeal to the High Court was unsuccessful. That he has a young family that is traumatized by his imprisonment of 10 years. That he was the breadwinner of the family. That his wife left the home after his appeal was dismissed leaving the children with nobody to take care of them. He pleaded with the court to substitute the sentence with one of payment of a fine or community service order.

2. The court called for a pre-sentencing report that was prepared by a Probation Officer, Kakamega County. The report indicated that the petitioner is aged 38 years. That he has a wife and two children aged 5 and 9 years. That the wife lives with the two children in the petitioner's one acre piece of land. That the petitioner has served 3 years of the prison term. That his victim was his close friend. That the victim prayed that the petitioner be released from custody as his (petitioner's) family is suffering due to the petitioner's imprisonment. That the petitioner's family and community are not opposed to his release. The report recommended the petitioner's release from prison.

3. A further report from G.K. Prison Kakamega indicates that the petitioner relates well with prison members of staff and his fellow inmates. That he has done a vocational training course and a diploma in theology.

4. The state relied on the contents of the pre-sentencing report.

5. I have considered the petition and the grounds adduced in support thereof. The petitioner in his petition was seeking for re-sentencing on the grounds of discovery of new and compelling evidence. However in the supporting affidavit, the petitioner did not adduce any grounds for re-trial. He instead pleaded for substitution of his sentence. In the premises there are no grounds adduced to support a re-trial. The petition ought to be dismissed on this ground.

6. The petitioner appealed against the conviction and the sentence before the High Court. Among the grounds of appeal was that the sentence of 10 years imprisonment was excessive. A Judge of the High Court, Sitati J., did consider that ground of appeal and held that the trial court properly exercised its discretion in sentencing and that she found no reason to interfere with the sentence. This being a court of equal jurisdiction as that of Sitati J. it is an abuse of the trial process for the petitioner to approach the High Court again seeking for substitution of the sentence when the same was declined by Sitati J. The option was for the petitioner to appeal against the judgment of Sitati J.

7. The upshot is that I find no merit in the petition. The same is thereby dismissed and it is so ordered.

Delivered, dated and signed at Kakamega this 30th day of September, 2020.

J. N. NJAGI

JUDGE

In the presence of:

Mr. Mutua for State/Respondent

Petitioner – Present through video link to GK Prison, Kakamega

Court Assistant - Polycap

14 days right of appeal.