

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

[CORAM: MRIMA, J.]

CONST. CRIMINAL PETITION NO. 37 OF 2018

MJG.....PETITIONER

-VERSUS-

REPUBLIC.....STATE

JUDGMENT

1. The Petitioner was jointly charged, tried and convicted with others with the offence of grievous harm. He was sentenced to 20 years imprisonment.
2. The Petitioner filed this Petition against the sentence. He contended that he was a minor when he committed the offence and when he was sentenced to a term of imprisonment. The Petitioner submitted that he had raised the plea of age before the trial court and the High Court on appeal in vain. He prayed that sentence be set aside and he be placed at liberty.
3. The State opposed the Petition. It argued that the plea of age was already raised before the trial court and on appeal at the High Court. It cannot therefore be relitigated. However, the State was not averse to the release of the Petitioner in view of the period he had served in prison.
4. I have considered the Petition. It is true the plea of age was conclusively dealt with by the trial court and the High Court. The Petitioner never appealed to the Court of Appeal. The Petition cannot therefore succeed on that ground. The Petition is hereby dismissed.
5. I was as well called to relook at the sentence. A Sentence Review Report was availed. I have considered the contents of the Report and its recommendation. The Report pointed *inter alia* that the Petitioner was charged with others who were long released and are by now settled at their homes.
6. I have carefully addressed my mind to this matter. I am also of the view that the sentence of 7 years served by the Petitioner was sufficient to rehabilitate him. The Report confirmed that the Petitioner had been of good character at the prison and is remorseful.
7. I hereby review the sentence to the period already served. The Petitioner shall be set at liberty forthwith unless otherwise lawfully held.
8. It is so ordered.

DELIVERED, DATED and SIGNED at MIGORI this 30th day of October 2019

A. C. MRIMA

JUDGE

Judgment delivered in open Court and in the presence of:

Mbigiri Josephat Gati the Petitioner in person.

Mr. Kimanthi, Senior Principal Prosecution Counsel instructed by the Office of the Director of Public Prosecutions for the State.

Evelyne Nyauke – Court Assistant