



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 42 OF 2019

CHARLES ODHIAMBO MASANGO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being a Constitutional Petition for Resentencing of the sentence Dated 24.10.2007

in Ukwala PMCRC No. 735 of 2007 before Hon. D.A.A. KAYILA –P.M.)

JUDGMENT OF THE COURT

1. The Applicant/Petitioner herein Charles Odhiambo Msango was convicted and sentenced to serve 20 years imprisonment for the **offence of defilement of a child aged 11 years** contrary to section 8(1) as read with subsection (2) of the Sexual Offences Act. This was on 24.10.2007 on his own plea of guilty. He appealed vide Kisumu HCCCRA 176/2007 but the appeal was dismissed.
2. He has almost completed his sentence and is remaining with 1 year and 8 months. He seeks for resentencing on account that his fundamental rights were violated and that he was given a mandatory 20 years sentence.
3. The Petitioner was charged and convicted under **Section 8(1) as read with Section (2) of the Sexual Offences Act**. The Mandatory minimum sentence then was life imprisonment. The High Court did not interfere with the sentence of 20 years imprisonment which appeared to be illegal then as the Child victim was aged 11 years.
4. The Petitioner has not challenged the decision of the High Court to the Court of Appeal and instead seeks this court to review his sentence. Although the Petitioner has served substantial sentence of 20 years imprisonment, this Court is **functus officio** its own decision. I have no jurisdiction to review the sentence which was upheld by a Court of concurrent competent jurisdiction.
5. The question of resentencing does not arise as the Petitioner was not handed minimum mandatory sentence and as his right of appeal lapsed.
6. The petitioner is lucky that he was handed a custodial sentence and not life imprisonment. For the above reasons this petition is found to be devoid of merit the same is dismissed.

Dated, signed and delivered at Siaya this 29th day of October, 2019.

R. E. ABURILI

JUDGE

In the presence of:

The Petitioner in person

Mr. Okachi Senior Principal Prosecution Counsel for the State

