

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

CONSTITUTIONAL PETITION NO. 1 OF 2018

TYSON GEORGE NGOWA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGEMENT

1. The Petitioner, Tyson George Ngowa, is serving 20 years imprisonment for the offence of attempted defilement contrary to Section 9(1) as read with Section 9(2) of the Sexual Offences Act, 2006. His appeals to this Court and the Court of Appeal were unsuccessful. Through this petition he seeks a declaration that he is entitled to be considered for remission of sentence as provided by Section 46 of the Prisons Act. His petition is premised on various provisions of the Constitution.

2. In brief, the Petitioner's case is that when he was sentenced on 29th June, 2015 the power of remission of sentence granted to the Commissioner General of Prisons had been deleted from the Prisons Act, Cap. 90 through the Statute Law (Miscellaneous Amendments) Act, 2014. His case is that even after the power of remission of sentence was reinstated by the Statute Law (Miscellaneous Amendments) Act, 2015, he has not been granted remission. He urges this court to find that the decision to deny him remission of sentence is unconstitutional.

3. The Respondent through the Director of Public Prosecutions opposed the petition on the ground that this court has no power to grant remission.

4. I have considered the rival arguments in this case and find that for the reasons stated in **Francis Opondo v Republic of Kenya [2017] eKLR; Busia H.C. Criminal Appeal No. 13 of 2015** and **Malindi H.C. Constitutional Petition No. 6 of 2018, Hudson Okunda Ochola v Republic** the Petitioner's case has merit.

5. The Petitioner being a convicted prisoner was entitled to remission of sentence from 15th December, 2015 when remission of sentence was reinstated in the Prisons Act.

6. In the circumstances, an order is issued directing the Commissioner General of Prisons to apply remission to the sentence of the Petitioner in accordance with Section 46 of the Prisons Act. The remission will only be applicable to the sentence that the Petitioner was yet to serve on 15th December, 2015 when remission of sentences for convicted prisoners was reintroduced.

Dated, signed and delivered at Malindi this 19th day of December, 2018.

W. KORIR,

JUDGE OF THE HIGH COURT