

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

MISC. CRIMINAL APPLICATION NO. E113 OF 2021

CORAM: R.E. ABURILI J

SAMUEL OCHIENG NGADA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

Being an application for sentence revision from arising from conviction and sentence of the

High Court at Siaya in Criminal Case No. 47 of 2015 on 21/4/2016 by Hon. J. Makau - J)

RULING

1. The applicant herein is Samuel Ochieng Ngada. He applies by his Notice of motion filed on 9/11/2021, for reconsideration of 2 years and 4 months spend in custody prior to his sentencing by Hon. J. Makau J in ***Siaya HC Cr. Case No. 47 of 2015*** where he was convicted of the offence of Manslaughter contrary to ***Section 202 of Penal Code***. Initially he had been charged with the offence of Murder contrary to ***Section 203 as read with Section 204 of the Penal Code*** which charge was substituted in the judgment of Makau J rendered on 21/4/2016.
2. I have called for the trial court record and observed that the applicant was sentenced to serve 12 years imprisonment.
3. Punishment for Manslaughter is life imprisonments, upon conviction. The trial Judge exercised his discretion leniently and imposed a lesser severe sentence which cannot be compared to a life imprisonment maximum provided by the law. There is no illegality or omission by the trial court and application of ***Section 333(2)*** is applicable only where the accused person was in custody during the period of his trial or where he never absconded bond granted to him.
4. In this case, proceedings of the trial court in ***HCR 47/2015*** show that the accused now convict applicant was granted bail pending trial on 18/6/2015 after a favourable Prebail report was received by the court vide orders of Hon. J. Owiti, Deputy Registrar.
5. The original court record was forwarded to Kisumu Court of Appeal following an appeal filed by the State vide Notice of Appeal dated 20th June 2016.
6. As the outcome of the appeal is unknown, I find no jurisdiction to entertain any application to review or interfere with sentence lawfully imposed by the learned Judge of concurrent jurisdiction.
7. The application is declined and dismissed.
8. File closed.
9. Orders accordingly.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 16TH DAY OF NOVEMBER, 2021

R.E. ABURILI

JUDGE