

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAMIRA

PETITION NO. 25 OF 2019

JARED ONDIEKI MOKUA.....PETITIONER

-VRS-

THE REPUBLIC.....RESPONDENT

JUDGEMENT

By the Notice of Motion filed herein on 18th July 2019 the petitioner is **simply urging a reduction of his ten (10) years imprisonment sentence to a non-custodial one and more especially to probation.**

When the application/petition came up for hearing before me the petitioner did not have any documents but as he intimated that he had appealed in this case vide Nyamira HCCRA NO. 649 of 2017, I took the liberty of calling up the file so that I could arrive at an informed decision. It happened that the case file No. 649 of 2017 was the lower court file the appeal in the High Court being HCCRA No. 60 of 2016.

From the record of HCCRA No. 60 of 2016 and the lower court record CMCR 649 of 2017, **the petitioner was found guilty and convicted for the offence of committing an indecent act with a child contrary to Section 11 (1) of the Sexual Offences Act.** He was so convicted and sentenced on 26th September 2016. When he appealed to this court, the court affirmed the conviction and upheld the sentence noting that the prosecution had proved its case beyond reasonable doubt and the sentence imposed by the lower court was lawful. He did not appeal the judgement of this court. It is my finding that his petition to have the sentence reduced to an order for probation has no merit. **The offence he committed and for which he was convicted and sentenced is a serious offence and is never one of those considered when orders are made to decongest the prisons.** Sentences serve a purpose which as set out in the **Sentencing Policy Guidelines** is: -

“1. Retribution – to punish the offender for his/her criminal conduct in a just manner.

2. Deterrence – to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.

3. Rehabilitation – to enable the offender reform from his criminal disposition and become a law abiding person.

4. Restorative justice – to address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims; communities and offenders’ needs and justice demand that these are met. Further, to promote a sense of responsibility through the offender’s contribution towards meeting the victim’s needs.

5. Community protection – to protect the community by incapacitating the offender.

6. Denunciation – to communicate the community’s condemnation of the criminal conduct.”

None of the above objectives would be met by making a probation order or other non-custodial sentence. It would be a slap on the wrist to order a non-custodial sentence for such a serious crime. Luckily for the petitioner the High Court has now opened the way for serious crime offenders to be given remission, a power that is exercisable by the Prisons authorities upon the said offenders fulfilling such conditions – **see Sammy Musembi Mbugua & 4 others v Attorney General & Another [2019] eKLR.** The petitioner having opted not to appeal against the decision of this court ought to await his turn for remission otherwise I concur with Counsel for the respondent that his petition lacks merit. It is dismissed.

Signed, dated and delivered in open court this 14th day of November 2019.

E. N. MAINA

JUDGE