



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYAMIRA

PETITION NO. 31 OF 2019

ALPHOSE OMBOGA OBAGA.....PETITIONER

-VRS-

THE REPUBLIC.....RESPONDENT

JUDGEMENT

The petitioner in this case was the appellant in Nyamira HCCRA No. 10 of 2018 which was dismissed by this court on 14th March 2019. By this petition he seeks: -

- “1. A declaration that his right to a fair trial as guaranteed by Article 50 was violated.**
- 2. That this court reduce his sentence or give him a non custodial sentence.**
- 3. That this court grant him reliefs as provided under Article 23 of the Constitution.**
- 4. That having been in custody for 1 ½ years he be set at liberty.**
- 5. Any other relief that this court may deem fit and just and fair to grant.”**

This court heard the arguments by the parties on 16th October 2019 and the same have been considered very carefully. In a judgement rendered by this court on 14th March 2019, this court had the following to state about the appellant’s/now petitioner rights were violated: -

“I am not persuaded that his right to a fair trial was violated. He robustly participated in the trial meaning that he understood the charges facing him. Moreover, had the rights been violated, this would have been one of the grounds in this appeal. In the submissions his Advocate has not alluded to such violation.....”

It is clear therefore that this court considered the allegation of violation of his rights in the appeal just as it considered the legality and extent of the sentence. In my view therefore this petition is akin to asking me to sit on appeal against my own judgement which I cannot do. The petitioner’s remedy lay in filing an appeal or seeking a review in the Court of Appeal as provided in **Article 50 (2) (q) of the Constitution** which states:-

“50. Fair hearing

(2) Every accused person has the right to a fair trial, which includes the right—

(q) If convicted to appeal to, or apply for review by, a higher court as prescribed by law.”

This petition is misconceived and is not properly before this court as it cannot sit on appeal against its own judgement. Accordingly, the same is dismissed.

Signed, dated and delivered this 5th day of December 2019.

E. N. MAINA

JUDGE