



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

PETITION NO E017 OF 2021

GEORGE OKOTH OGALLA.....PETITIONER

Versus

REPUBLICRESPONDENT

JUDGMENT

The Petitioner **George Okoth Ogalla**, was convicted and sentenced to ten (10) years imprisonment on 16/10/2019 for the offence of defilement contrary to Section 8(1) as read with Section 8(3) of the Sexual Offences Act No. 3 of 2006 by the Principal Magistrate’s Court Migori.

The Petitioner filed an undated Petition on 16/3/2021 seeking a non – custodial sentence or a review of his sentence to a lesser sentence; the Petitioner also asked this court to consider the Provisions of Section 354 and 356 of the Criminal Procedure Code Cap 75 Laws of Kenya (CPC) together with Articles 23 (3) (f) and (50) (q) of the Constitution.

In his submissions filed on 14/9/2021, the Petitioner submitted that he had stayed in prison for a period of one year and eight months and asked this court to consider this time in computation of his ten (10) years sentence and further relied on the Provisions in Sections 332(2) and 362 of the Criminal Procedure Code. Further to the foregoing, he submitted that he has undergone a good reform process and learnt carpentry which will assist him either on probation or community service order (C. S. O) as he remains with less than three (3) years to complete his service after the time in remand is taken into consideration.

Learned Counsel Mr. Kimanthi for the respondent submitted that the Petitioner was entitled to a right of appeal but elected not to do so which is indicative of the fact that he was satisfied with the sentence; that the period in which he served custody was taken into account by the trial Magistrate before giving him the final sentence; that Section 8(3) of the Sexual Offences Act No. 3 of 2006 provides for not less than twenty (20) years but the petitioner was sentenced to serve a ten (10) years sentence which was too lenient. The Respondent asked the court to dismiss the Petition.

This court has carefully, read and considered the Petitioner’s petition, supporting Affidavit and the rival submissions.

The Petitioner’s main prayer is for this court to consider him for a non – custodial sentence or lessen his sentence. One of the provisions of the law that the Petitioner relies upon is Article 23 (3) (f) which is for the grant of relief of judicial review order. No basis has been laid for the grant of the said relief.

The Petitioner is entitled to seek review of his sentence under Article 50(2) (q) of the Constitution of Kenya which provides:-

“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.”

The Petitioner further submitted that the trial court did not take into consideration the period he served in remand while meting out its sentence. **Section 333(2) of the Criminal Procedure Code** provides that when issuing a sentence, courts should consider the period already spent in custody.

The Petitioner contends he had been in remand for a period of one (1) year and eight months and his bond was not considered and this period was also not taken into account during conviction. However, as pointed out by Mr. Kimanthi, the Petitioner faced a very serious offence of defilement that upon conviction one is liable to not less than twenty (20) years imprisonment. He got a paltry ten years imprisonment. The trial court was more than lenient in meting out that sentence and this court can only presume that even if not explicitly stated, the period he was in remand was considered in the sentence.

The Petitioner has asked this court to issue him a Community Service Order Sentence. Section 3 of The Community Service Order Act limits the imposition of community service orders to offences which are punishable with imprisonment for less than three (3) years or those which exceed three years and the trial court is of the view it can be punishable by a lesser sentence.

In this instance, as rightly submitted by the Learned Counsel for the respondent, the offence herein carries a mandatory minimum sentence and therefore cannot fall under one punishable with a community service order. In the

end I find that this is not a case that commends itself for a reduction of the sentence. There are no convincing grounds for review of the sentence. The Petition is dismissed.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MIGORI THIS 4TH DAY OF NOVEMBER , 2021

R. WENDOH

JUDGE

Judgment delivered in open court and in the presence of: -

Mr. Kimanthi. State Counsel

Appellant present in person.

Ms. Nyauke Court Assistant



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