

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO. 2409 OF 2009 AT KISII LAW COURT

MISC APPLICATION NO. 147 OF 2019

BOB NYAKUNDI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. **Bob Nyakundi** seeks a review of his sentence. He states that he is satisfied with the judgment passed by the subordinate court on the 26th February 2010. He was charged with the offence of Unnatural offence under the Penal Code and indecent act under the Sexual Offences Act and sentenced to 20 years imprisonment. He avers that he pleaded guilty to the charge and that he did not intend to commit the crime in question. That the 20 years imprisonment is manifestly harsh and excessive and he seeks to have the sentence reviewed to community service. He contends that he is a first offender, a good citizen, he is the sole bread winner of his family and that his wife is unable to provide all the basic needs of their family. That he will abide by the rule of the law, he has gone through rehabilitation while in prison.

2. The applicant had filed an appeal which he withdrew in court on the 3rd August 2018. Whilst sentencing the applicant the trial court noted that the victim would not able a normal life and sentenced the applicant to 20 years each on each count. In count no. 1 he was charged with the offence of, “unlawful offence contrary to section 162 (a) of the Penal Code”. The 2nd count was a charge of “indecent act with a child contrary to section 11 (1) of the sexual Offence Act.” As per the Penal Code section 162 provides as follows; ***Provided that, in the case of an offence under paragraph (a), the offender shall be liable to imprisonment for twenty-one years if—***

(i) the offence was committed without the consent of the person who was carnally known;

Section 11 (1) of the Sexual Offences Act provides as follows;

(1) Any person who commits an indecent act with a child is guilty of the offence of committing an indecent act with a child and is liable upon conviction to imprisonment for a term of not less than ten years.

3. At the hearing of this application the Respondent indicated that they left it to the court to decide on the application. The sentence meted out on the applicant in Count No. 1 and Count 2 respectively were proper in law. After considering the evidence led before the trial court, I note that the court proceedings were done in a proper and lawful way and the sentencing after mitigation was as per the law. Of essence is what happened and the injuries inflicted on the victim. The victim a 7 year girl suffered a tear in her anal area. The walls were swollen, lacerated and painful and the sphincter was torn. Considering all that happened and what the victim underwent, I am inclined to decline the applicant’s application and dismiss his application to review his sentence as sought. His application is dismissed. He shall continue to serve his sentence.

Dated signed and delivered at Kisii on the 13th day of November 2019.

R.E.OUGO

JUDGE

In the presence of;

Applicant In Person

Mr. Otieno Senior State Counsel in the office of the DPP

Ms. Rael Clerk Court