



REPUBLIC OF KENYA



**Indeche & another v Republic (Miscellaneous Criminal Application
E003 of 2023) [2023] KEHC 3102 (KLR) (28 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 3102 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CRIMINAL APPLICATION E003 OF 2023**

**RE ABURILI, J
MARCH 28, 2023**

BETWEEN

JOSEPH AKWEYWA INDECHE 1ST APPLICANT

JOSHUA MBOYA 2ND APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicants herein Joseph Akweywa Indeche and Joshua Mboya Ashikanga were convicted of the offence of murder and sentenced to death *vide* Kakamega HCCRC No 7 of 2005. They appealed to the Court of Appeal *vide* Kisumu Court of Appeal Criminal Appeal No 371 of 2012 which appeal was dismissed.
2. They petitioned this court for resentencing *vide* Criminal Petition No. 12 of 2020 which petition was allowed *vide* judgement rendered on 26th October 2021 where death sentence was reviewed to thirty (30) years imprisonment.
3. Paragraph 29 of the said judgment states:-

“ 29 It is hereby ordered and directed that the period the petitioners spent in
– custody, if at all, shall be taken into account when computing their sentences in
accordance with Section 333(2) of the Criminal Procedure Code Cap 75 (Laws
of Kenya).”
4. The court having pronounced itself on sentence under Section 333(2) of the Criminal Procedure Code, I find this application to be extremely mischievous and that the applicants are dishonest in their application knowing very well that an innocent life was lost through their bloody hands and that they escaped the hangman’s noose courtesy of the discretion exercised by this court.



5. The application that they now want the remainder of sentenced served out on probation does not make any sense in the interest of justice as there is even no evidence by way of testimonials or recommendations from the prison authorities.
6. I find this application filed on 16th February 2023 devoid of any merit. It is hereby dismissed.
7. File closed.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 28TH DAY OF MARCH, 2023

R. E. ABURILI

JUDGE

