



REPUBLIC OF KENYA



KENYA LAW
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Kariuki & another v Director of Public Prosecutions (Miscellaneous Criminal Application 277 of 2019) [2022] KEHC 3207 (KLR) (Crim) (27 June 2022) (Ruling)

Neutral citation: [2022] KEHC 3207 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS CRIMINAL APPLICATION 277 OF 2019
LN MUTENDE, J
JUNE 27, 2022

BETWEEN

PETER KIAMA KARIUKI 1ST APPLICANT

GEOFFREY KINYANJUI MIRARA 2ND APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTIONS RESPONDENT

RULING

1. Peter Kiama Kariuki and Geoffrey Kinyanjui Mirara, have approached this court seeking orders that:
 - (i) That this Hon. Court makes a finding that the law envisages that the sentences should run from the date of arrest as opposed to the date of conviction (within the meaning of Section 333 (2) of the *Criminal Procedure Code*);
 - (ii) That this Hon. Court declares that the sentence ought to have run from the date of arrest and not from 4/4/2019;
2. The sentence they are calling upon this court to interfere with was delivered by Kimaru J. who stated thus:

“With regards to the sentence, following the recent decision of the Supreme Court in Francis Karioko Muruatetu & Another vs. Republic (2017) eKLR this court has discretion to resentence the Appellant on the basis of severity of the offence. In the present appeal. The Appellants robbed the complainants after subduing them using a firearm. They subjected to a horrendous ordeal from the time they kidnapped them to the time they abandoned them in Nairobi. Violence was meted out on the complainants. This court can only imagine the psychological torture that the complainants experienced during the ordeal. The court has



also taken into account that the Appellants have been in lawful custody for a period of ten (10) years. The court also took into account their mitigation. However, taking into account the entire circumstances of the case, this court formed the view that the death sentence is not called for. In the premises, this court sets aside the death sentence meted by the trial court. The same is substituted by an order of this court sentencing the Appellants to serve ten (10) years imprisonment with effect from the date of this judgment. This court has taken into account the period that the Appellants were in pre-trial custody and the period that they have been in prison since their conviction. It is so ordered.”

3. It is apparent that this court presided over by Kimaru J. dealt with the question of sentence. Therefore, I have no jurisdiction to re-examine the decision.
4. In the result, the application is bereft of merit. Accordingly, it fails and is hereby dismissed.
5. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI, THIS 27TH DAY OF JUNE, 2022.

L. N. MUTENDE

JUDGE

IN THE PRESENCE OF:

Applicants – 1 and 2

Mr. Kiragu for the State

Court Assistant - Mutai

