



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**PETITION NO. 84 OF 2020**

**WILFRED KARIUKI GITAHU.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The petitioner herein was charged with the offence of murder contrary to Section 203 as read with 204 of the Penal Code. He was convicted and sentenced to suffer death.
2. Following the decision of the Supreme Court in Petition No. 15 of 2015, he filed Misc. Application No. 52 of 2019 which was heard and the death penalty was substituted with a 25 years term of imprisonment. He has now moved this court by way of the petition dated 9<sup>th</sup> October, 2020 in which he sought various orders to wit;
  - a) *A declaration that the petitioner is constitutionally guaranteed for the benefit of the law which include the right to the benefit of the least severe punishment.*
  - b) *That this Honourable Court be pleased to order that the petitioner's remaining part of the sentence be substituted with Community Service Order.*
  - c) *An order directing the petitioner's case to probation officer under the required procedure as he is ready to serve in whatever conditions that will be imposed.*
  - d) *A declaration that the petitioner is entitled and qualified for the benefit of the law since every person is equal before the law and have equal rights and equal benefit and protection of the law.*
3. The petitioner proceeded with the petition by way of written submissions wherein he submitted that the court has unlimited jurisdiction in civil and criminal matters.
4. He further submitted that he regrets having committed the offence and for the 20 years he has been in prison, he has learnt a lot and it is in the interest of justice that he be released to serve the remainder of the sentence under the Community Service Order.
5. Counsel for the respondent opposed the application for the reasons that the petitioner filed a similar application in Petition No. 52 of 2019 and his sentence was reduced to 25 years and that there is no law that allows the court to grant the order sought for serving the sentence out of prison.
6. The court has considered the application and the submissions by the petitioner and by the counsel of the respondent.
7. First and foremost, the petitioner admitted having filed Petition No. 52 of 2015 in which his sentence was reduced from death to a term of 25 years imprisonment.
8. As rightly submitted by counsel for the respondent, there is no law that allows this court to grant the orders sought in the petitioner's application to serve the remaining part of his sentence under Community Service Order.
9. Similarly, the court has no jurisdiction at this stage to refer the petitioner's case to probation officer in the circumstances of the case.

10. In the premises, I find that the application has no merit and it is hereby dismissed.

11. It is so ordered.

**Delivered, dated and signed at Embu this 27<sup>th</sup> day of January, 2021.**

**L. NJUGUNA**

**JUDGE**

.....for the Applicant

.....for the Respondent