



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

Coram: D. K. Kemei - J

**CRIMINAL REVISION NO. 198 OF 2020**

**HASSAN ABDALLAH MOHAMMED.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING ON DIRECTIONS**

1. The Applicant herein, **Hassan Abdallah Mohammed** filed an application dated 11/06/2020 seeking for re-sentencing. Parties took directions to canvass the said application by way of written submissions and that parties were to be at liberty to highlight on those submissions. However, before the same could be received, the Applicant raised a complaint to the effect that his personal items such as clothes were not handed over to him by the Kitengela G. K. Prison when it transferred him to Kamiti G. K. Prison. This prompted this court to summon the officer in charge Kitengela G. K. Prison to explain about the whereabouts of the Applicant's items. An officer was duly availed from the said prison.

2. **No. 39830 PC Eric Mokuu** testified and stated that he is a Prison's officer attached at the documentation Kitengela G. K. Prison. He confirmed that upon the arrival of the Applicant at their facility three (3) of his personal items namely one brown trouser, one grey jacket and one grey T-shirt were duly received and captured in the register as well as on the committal warrant. He further stated that the items were put in a brown disposable bag and given the tag number 320 and that the Applicant was issued with prisoner's uniform. He went on to state that the Applicant was later transferred to Kamiti G. K. Prison and that subsequently his personal items were forwarded to the said prison. He produced the report together with the relevant documentation showing the transfer of the Applicant as well as his personal items. He finally stated that Kitengela does not now have any of the Applicant's personal property.

On cross-examination, he stated that the Applicant had signed the document which was countersigned by a prison officer confirming receipt of the items into the prison facility. He also confirmed that prisoners do not thumbprint the register but only at the back of the committal warrant. He further confirmed that the Kamiti Prison confirmed receipt of the Applicant's personal items and that the Applicant should follow up with Kamiti Prison.

3. I have considered the Applicant's complaint as well as the response given by the officer from Kitengela G. K. Prison. I have also perused the record availed from Kitengela G. K. Prison regarding the movement of the Applicant's personal items. The copy of the register as well as the correspondences regarding the Applicant's transfer from Kitengela Prison to Kamiti G. K. Prison clearly shows that the Applicant's personal items tagged as number 320 were duly handed over to Kamiti Prison. There is evidence that the items were duly received even though the Applicant has disputed that the items are not his. I find the documentary evidence presented leaves no doubt that the items tagged as No.320 actually belonged to him as per the copy of register. I note that the Applicant has not disputed the said copy of the record/register which was made at the time of arrival from Mavoko Law Courts where he had been resented. At the time of arrival at Kitengela Prison facility his items were captured in the register and given the number 320. The officer who testified herein confirmed that prisoners do not thumb print on the registers but at the back of the committal bundle which is a standard practice in prisons. The photograph shows the items on tag number 320. The Applicant's main grouse has been that the prison authorities did not have his items accompany him during the transfer to Kamiti. The officer who appeared herein gave an explanation for the lapse but maintained that the Applicant's items were subsequently dispatched to Kamiti prison. If the Applicant's sole reason for rejecting the items is because they were sent afterwards then, I must find the Applicant's refusal to accept the said items not in good faith. As the items have been confirmed to have been dispatched to Kamiti prison, the Applicant should proceed to pick them from there.

4. In view of the foregoing, the Applicant's oral request to be given different items than had been originally received from him lacks merit. The same is rejected. The explanation tendered by No. 39830 PC. Eric Mokuu from Kitengela G. K. Prison regarding the Applicant's personal items is plausible and that the same is accepted as the true reflection of what had transpired right from the time the Applicant arrived at Kitengela prison until his eventual transfer to Kamiti G. K. Prison.

5. The following directions are hereby issued:-

***(1) The Applicant is directed to proceed and collect his personal items from Kamiti G. K. Prison.***

***(2) The Applicant is directed to file and serve his submissions regarding the pending application lodged on 3/06/2020.***

It is so ordered.

**Dated and delivered at Machakos this 20<sup>th</sup> day of January, 2021.**

**D. K. Kemei**

**Judge**