



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

(CORAM: CHERERE- J.)

CRIMINAL PETITION NO. 57 OF 2019

BETWEEN

GEOFFREY MWITI GIKUNDA.....1ST PETITIONER

SOLOMON NDEREBA M'IRURA.....2ND PETITIONER

NATHAN KIMAITA GUANTAL.....3RD PETITIONER

ZAKAYO MWITI MBUL.....4TH PETITIONER

AND

REPUBLIC.....RESPONDENT

RULING

- 1) By **Petition No. 16, 47, 68, 92 and 93 of 2018**, the Petitioners had their sentences reduced from that of death to 25 years' imprisonment.
- 2) In **Petition No. 47 of 2018** in which the 1st applicant was re-sentenced to 25 years, Majanja J in a judgment dated 12/7/2018 specifically stated in paragraph 10 that he had taken into consideration the period of 4 years that the petitioner therein had spent in custody.
- 3) In the present application, the Petitioners seek a review of the sentences on the grounds that they have acquired skills while in custody and that the 3rd and 4th Petitioners were minors at the time of conviction.
- 4) It is worthy to note here that a similar application dated 01st October, 2019 seeking a review of the sentence on the grounds that the court did not take into account the period spent in custody was disallowed by a ruling dated 23rd July, 2020 where Mabeya J. rendered himself as follows:
 - 1) **I am of the view and so hold that the Court was alive of its obligations under the proviso to section 333 of the Code. It must have considered the same before reducing the applicants' sentences from that of death to 25 years' imprisonment.**
 - 2) **Accordingly, the applicants should have appealed against that decision if they felt aggrieved that the Court had not referred to that section while re-sentencing them. I reject the first prayer in the Motion under consideration. The sentences shall run from the dates of the applicants' original sentences as ordered by the Court that revised their sentences.**
- 5) Court orders are not made in vain. The Court does not, and ought not to be seen to make orders in vain; otherwise the Court would be exposed to ridicule, and no agency of the Constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of the people.
- 6) Most unfortunately, by this application, the Petitioners seek to be allowed to improperly and impermissibly re-litigate endlessly on an issue that has already been determined. Litigation must surely come to an end.
- 7) From the foregoing analysis, I have come to the conclusion that the notice of Motion dated 12th April, 2020 is an *abuse of the court* and it is disallowed.

DELIVERED AT MERU THIS 20TH DAY OF MAY 2021

T. W. CHERERE

JUDGE

In the presence of-

Court Assistant - Kinoti

1st Petitioner - Present

2nd Petitioner - Present

3rd Petitioner - Present

4th Petitioner - Present

For Petitioners - N/A for Kiogora Mugambi & Co. Advocates

For the State - Ms. Mbithe