



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL DIVISION**

**MISC CRIMINAL APPLICATION NO. 152 OF 2020**

**AGGREY CHITERI.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. Through a notice of motion dated 19<sup>th</sup> May 2020 **Aggrey Chiteri**, the applicant, seeks orders as follows:

- a. **THAT** the Honourable Court do substitute the remainder sentence to be served on probation.
- b. **THAT** the Honourable Court do order the terms and conditions for the applicant to abide with while serving probation.
- c. **THAT** the Court do order urgently the file be placed before the Probation committee.
- d. **Any other relief** the court can order for the Applicant/Petitioner.

2. The application is premised on grounds that the applicant has been in custody for 17 years following his arrest and subsequent sentence to suffer death on 2nd April 2004 for the offence of robbery with violence. That currently he is serving a 5 years jail sentence pronounced on 13<sup>th</sup> day February 2019 by Justice Luka Kimaru after benefiting from 1/3 rebate from the prisons Act, now he has 2 years, 2 months to serve. That this court has power to review orders earlier made by the court on humanitarian grounds in the light of Covid -19 pandemic. That his immunity which is already compromised is likely to be compromised even more thus exposing him to the high risk of contracting the dreaded corona virus, hence the prayer to substitute the term of imprisonment with a non-custodial sentence or even conditional discharge under Section 35 (1) of the Penal Code or both.

3. The application is opposed by the State/Respondent. It was urged by Ms. Ndombi learned State Counsel that a similar application was heard by Hon. Justice Kimaru and a ruling delivered. Therefore, this court lacks jurisdiction to determine the matter.

4. In a rejoinder the applicant argued that the application before Hon. Justice Kimaru was on re-sentencing.

5. I have considered rival submissions by the applicant and respondent. The applicant filed a petition seeking re-sentencing. A matter that was considered and determined by Kimaru J. Before the court the appellant stated thus:

***“I was arrested on 29/5/2003. I have been in lawful custody for 15 years. I admit I committed the offence. I was young and misguided... I have reformed. I am ready to return back to the society... I pray for re-consideration of the sentence so that I am given a second chance of life.”***

6. The court determined the petition, set aside the life imprisonment and substituted it with five (5) years imprisonment.

7. Although the instant application is brought pursuant to the Probation Offenders Act seeking an order to place the file before the probation committee, for reconsideration of sentence it seeks review of the sentence meted out by Kimaru J. Both I and Kimaru J. have concurrent jurisdiction to determine matters before the High Court, therefore I would not be seized of jurisdiction to re-examine a sentence rendered by the High Court.

8. In the result, the application is struck out.

9. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY, THIS 24<sup>TH</sup> DAY OF NOVEMBER 2021**

**L. N. MUTENDE**

**JUDGE**

**IN THE PRESENCE OF:**

*Court Assistant – Mutai*

*Applicant*

*Mr. Kiragu - ODPP*