



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CORAM: A.K NDUNG'U J

MISCELLANEOUS CRIMINAL APPLICATION NO 19 OF 2020

GEORGE BIKERI NYAKUNDI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

BACKGROUND

1. The applicant herein, **George Bikeri Nyakundi**, was charged, convicted and sentenced to death for the offence of robbery with violence on the 7th July 2003 in **Nyamira Senior Resident Magistrate's Court Criminal Case Number 109 of 2003**. He filed a **Constitutional Petition Number 51 of 2018** at this Court before Majanja J and he was resented to 20 years imprisonment.
2. The applicant was also charged together with others in **Nakuru Chief Magistrate's Court Criminal Case Number 55 of 2003** with 3 counts of robbery with violence, 2 counts of attempted robbery with violence and 2 counts of being in possession of a firearm and ammunition. The applicant was convicted and sentenced to death. The applicant filed an application for re-sentencing, **Miscellaneous Criminal Application No. 46 of 2018 at Nakuru High Court**, and was re-sentenced to 30 years for the 2 counts of attempt robbery with violence and 2 counts of robbery with violence all the sentences running concurrently.
3. The applicant then filed **Miscellaneous Criminal Application No. 93 of 2019** seeking that the 20 years imprisonment meted in **Constitutional Petition No. 51 of 2018 at Kisii High Court** and 30 years imprisonment in **Miscellaneous Criminal Application No. 46 of 2018 at Nakuru High Court** to run concurrently. I allowed the application on 9th January 2020.

THE APPLICATION

4. The applicant has now filed this current application seeking to serve the remainder of his sentence on probation and/or in the alternative that the remainder of his sentence be suspended.
5. This is premised on the ground that he has already served 18 years and the remainder of his custodial sentence is only 1 ½ years. He claims to be suffering from a chronic disease and is in need of specialized treatment under the care of a specialist doctor.
6. The applicant also alleges that he has exemplified good behavior and is now a role model to the inmates having risen to the rank of "trustee" which is the highest reformatory stage as provided for under the provisions of the **Prisons Act Cap 90 of the Laws of Kenya** and awarded by the Commissioner General of Prisons.
7. It is the applicant's case that he has gone through various trainings among them, tailoring grade 3 and training in biblical studies.
8. When the application came up for hearing Mr. Kaba, counsel for the applicant, in his oral submissions reiterated the grounds raised in the application.
9. I have considered the application, the supporting affidavit, and the submissions filed as well as the authorities relied upon.
10. Mr. Kaba cited the case of **Chris Kasamba Karani v Republic Misc. Criminal Application No 52 of 2018** in support of the applicant's case. In **Chris Kasamba Karani v Republic (supra)**, Ngugi J substituted the death sentence imposed on the applicant therein with a custodial sentence equal to the term served plus a probationary period of three years.

11. As borne out of record, the applicant through the **Constitutional Petition Number 51 of 2018 at Kisii High Court** was re-sentenced to 20 years imprisonment while in **Nakuru High Court Miscellaneous Criminal Application No. 46 of 2018** he was re-sentenced to 30 years for the 2 counts of attempt robbery with violence and 2 counts of robbery with violence, the sentences running concurrently.

12. That would mean that he would serve the 30 years in custodial sentence as the 20 year sentence is served concurrently with the 30 year sentence. The effect of it is that he should serve a total of 30 years in jail and not 20 years as claimed in his application.

13. It is clear that the High Court both at Nakuru and at Kisii has previously reviewed the applicant's sentences to 30 years and 20 years in prison. This court proceeded to make a further order that the sentences were to run concurrently.

14. By so doing, the courts were clearly alive to the principles of sentencing and the dictum enunciated in the now famous Muruatetu case.

15. In view of the above, any further attempt to vary the sentences would be unwelcome. It is tantamount to re-litigating an issue already dealt with by the court.

16. This court appreciates the stated health challenges facing the applicant in prison. The best the court can do is to require the prison authorities to accord the applicant necessary medical attention.

17. Having considered the application herein in its entirety, I am persuaded that the same lacks merit and I proceed to dismiss the same.

Dated, Signed and Delivered at KISII this 24th day of June, 2020.

A. K. NDUNG'U

JUDGE