

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL MISC. APPLICATION NO. 15 OF 2020

ISAACK KIMANZI MUSEE.....1ST APPLICANT

JOSEPH MUTIO MBUKO.....2ND APPLICANT

ERIC MWANZIA MBITI.....3RD APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The 3 applicants **(1) Issack Kimanzi Musee, (2) Joseph Mutio Mbuko** and **(3) Eric Mwanzia Mbiti** were convicted and sentenced to death of capital robbery contrary to section 296(2) of the Penal Code Cap 63 Laws of Kenya.
2. They appealed all the way to Court of Appeal and lost in both conviction and sentence. They eventually sought re-sentencing via HCCRMisc. No. 22, 23 and 35 of 2018 and after full hearing this court relying on the Supreme Court case of **Muruatetu & Another vs Republic [2017] eKLR**. The sentence was reduced to 20 years sentence factoring in the period they were in custody.
3. They have now come once more in this court via HCCRMisc No. 15 of 2020 seeking the remaining 3 years of their sentence to be converted into C.S.O or Probation so that they can serve the same while out of prison but at their home areas.
4. According to the charge sheet they were arrested on 22/8/2010. Thus, they have been in custody for 10 years or thereabout according to the calculation thus it is not correct they have a balance of 3 years.
5. There is no evidence that they have been given a remission reducing their remaining period of 10 years to 3 years. Thus, will decline to make an order for C.S.O or Probation until the court is convinced by evidence that they have earned a remission or otherwise their balance is 3 years or less.
6. Orders accordingly.

DATED, DELIVERED AND SIGNED AT GARISSA THIS 23RD DAY OF JULY, 2020.

.....

C. KARIUKI

JUDGE