

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISC. CRIMINAL APPLICATION NO. 431 OF 2019

LESIT, J

DICKSON MBEYA MARENDE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the judgment of the High Court of Kenya at Nairobi (F. Muchemi, J) dated 12th February, 2015.)

RULING ON RE-SENTENCING

1. The Applicant **DICKSON MBEYA MARENDE** with another faced a charge of **murder** contrary to **section 203** as read with **section 204** of the **Penal Code**. He and his co-accused were convicted by the High Court, Muchemi, J on February 12, 2015. They appealed to the Court of Appeal and the appeal was dismissed in a judgment dated December 15th, 2017.

2. Having exhausted the appellate jurisdiction of the court, the Applicant filed a Chamber Summons filed in court on September 23, 2019. He sought to be heard pursuant to the Supreme Court directives on sentencing vide Petition No. 15 of 2015. He supported that application with an affidavit sworn by himself on the same day. In that affidavit he summarizes what is contained herein above and concludes by stating that he was seeking Re-Sentencing of his case pursuant to the Supreme Court decision and provisions of **section 333(2)** of the **Criminal Procedure Code**.

3. The Applicant gave oral submissions in which he urged the court to reduce his sentence of 25 years to 3 years. He explained that his co-accused sentence was reduced to 3 years after he made a similar application. He then urged the court to consider that he had undergone various courses and had attained various certificates both in Games like football and also in Biblical studies. He urged that he had learnt so much while in Prison. He also urged that he had a child who has fallen sick, and urged court to be merciful to him.

4. Ms. Nyauncho, Learned Prosecution Counsel opposed the application and urged that the Applicant was deserving of the sentence meted out to him due to the manner in which he attacked the Applicant in broad day light. She urged that the deceased was stabbed mercilessly in broad day light. Counsel urged the court to dismiss his application.

5. The court called for a Probation Report on Re-Sentencing. One was filed by Ms Mercy Kanyangi. In that Report, the family of the Applicant are willing to accept him back and help him settle down. The family of the victim were dismissive of the interview saying they wanted to be left alone as the matter was with the court. As Ms. Kanyangi observed, the reaction of the victim's family is indicative that they still hurt as a result of their kin's death.

6. I have considered the application. I have also perused the judgment of my sister Judge (Muchemi, J) and of the Court of Appeal in order to understand how the offence was committed. I see from the record that the attack against the deceased was unprovoked. It was also by at least four people including the Applicant and his co-accused at the trial. They all participated in beating the deceased senseless before one of them stabbed him.

7. The Applicant insisted to the Probation Officer, as he did at the trial and also in this court that it was not him who stabbed the deceased. The truth is, as the law provides, he was together with others who had formed a common intention to attack the deceased. It matters not that in the attack against the deceased, it was not his personal action which inflicted the fatal blow to the deceased. He is as guilty as the one who actually stabbed the deceased.

8. I caused a search to be conducted from the records of this court to try and obtain the record of the Re-Sentencing application made by the Applicant's co-accused Robert Mwangi Koigi. An entry was found in the record showing a **Misc. Criminal Appeal No. 475 of 2018** in which Robert Mwangi Koigi's application was granted to the effect his sentence of 25 years' imprisonment was reduced to 7 years.

9. Since the Applicant faced the same offence and his role was similar to that of his co-accused (not being the ones who actually stabbed the deceased causing the fatal blow) he should benefit from a similar order. It is only fair to do so.

10. In the result, the Applicant's application is allowed, the sentence of 25 years' imprisonment set aside and in substitution he should serve 7 years' imprisonment. The reduced sentence should run from the date of sentence by the trial court. The Applicant shall not be given any remission for this sentence.

DELIVERED THROUGH TEAMS THIS 24TH DAY OF SEPTEMBER, 2020.

LESIT, J.

JUDGE