

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

Coram: D. K. Kemei - J

MISC. CRIMINAL APPL. NO.18 OF 2020

DOMINIC NZANGI KIMEU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Applicant in a series of chequered applications has approached this court yet again and this time seeking to invoke section 333(2) of the Criminal Procedure Code for revision of sentence.
2. The applicant seeks that the court make orders that the 2 years, 6 months and 6 days that he was in custody he considered. He also seeks that the sentence be reduced to the time served.
3. The application was disposed of by way of written submissions. The applicant pointed out to court that he was arrested on 13.12.2012 and that he failed to raise the bond of Kshs 500,000/- hence he remained in custody. He sought that the sentence be reduced to time served and indicated that he has acquired various skills as evidenced by the certificates attached to the submissions. Mr. Martin Mwongera, prosecution counsel opposed the application.
4. The issue for determination is whether the court may grant the order sought.
5. The court had severally pointed out vide ruling delivered by this court on 11.6.2019 as well as that rendered by Hon Justice Odunga on 17.1.2020 that this court is functus officio meaning that this court cannot reduce the sentence meted on the applicant to time served.
6. Vide this court's ruling dated 11.6.2019 it was pointed out that the Applicant's request to have the judgement altered would amount to this court sitting on appeal and hence any appeals against an order from the high court can only be heard and determined by the Court of Appeal by dint of Article 164(3)(a) of the Constitution. This court must point out to the applicant that the court is already functus officio and the only recourse is for him to move to the Court of Appeal for further redress.
7. In the result the Applicant's application filed on 29.1.2020 lacks merit. The same is dismissed.

It is so ordered.

Dated and delivered at Machakos this 27th day of October,2020.

D. K. Kemei

Judge