



KTL.NO.490/2019

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

CONSTITUTIONAL PETITION NO. 11 OF 2018

IN THE MATTER OF ARTICLE 22(1) OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF CONTRAVENTION OF RIGHTS AND FUNDAMENTAL FREEDOMS UNDER ARTICLE 25(C), 49(F1), 50(E), 159(2)(a)(b) OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF H.C.CR. CASE FILE NO. 15 OF 2015 AT KITUI HIGH COURT

BETWEEN

KYALO MULWA.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. **Kyalo Mulwa**, the Applicant was arraigned before this Court having been charged with **Murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code**.
2. After full trial this Court found the Applicant having not acted with malice aforethought, therefore convicted him of the offence of **Manslaughter** and sentenced him to serve **nine (9) years imprisonment**.
3. He now petitions this Court to find that justice was not done pursuant to **Article 159(2)(a)(b)** of the **Constitution** and **Section 333(2)** of the **Civil Procedure Code**.
4. Further, it is his argument that the sentence imposed was harsh as he was in custody for **six (6) years** prior to being sentenced.
5. The alluded to provisions of the law provide thus:

“Article 159(2)(a)(b)

In exercising judicial authority, the courts and tribunals shall be guided by the following principles—

(a) justice shall be done to all, irrespective of status;

(b) justice shall not be delayed;

Section 333(2)

Subject to the provisions of section 38 of the Penal Code (Cap. 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code.

Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.

6. In exercising judicial authority the trial Court ought to ensure justice is done to all. In the instant case the Court would be obligated to ensure that justice is done not only to the Accused but also to victims of the crime committed. And in meting out the sentence the duration the individual has stayed in custody must also be considered.

7. The Applicant was convicted of the offence of **Manslaughter**. **Section 205** of the **Penal Code** provides thus:

“Any person who commits the felony of manslaughter is liable to imprisonment for life.”

8. It was mitigated on behalf of the Applicant that his family would compensate the family of the Deceased and they would foster reconciliation. In sentencing him the Court remarked thus:

“Mitigating factors considered and in particular, circumstances in which the offence was committed and the duration the Accused has been in custody. In the premises he is sentenced to serve nine (9) years imprisonment.”

9. It is therefore apparent that the period which the Applicant stayed in custody was taken into account. In the result the application lacks merit and is dismissed.

10. It is so ordered.

Dated, Signed and Delivered at Kitui this 30th day of January, 2019.

L. N. MUTENDE

JUDGE