



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**MISCELLANEOUS CRIMINAL APPEAL NO. 80 OF 2018**

**MARK WASIKE SIMIYU .....APPLICANT**

**VERSES**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant had been charged with the offence of **Incest contrary to section 20(1) of the sexual offences Act**. He was initially sentenced to life imprisonment which was later reduced to 15 years on appeal.
2. The Applicant file the supplication dated 11<sup>th</sup> July, 2018 seeking to be released on the ground that he has served a 1/3 of the sentenced. The learned state counsel opposed the same on the grounds that it was an abuse of the court process and went contrary to the provision of Section 46 of the Prisons Act.
3. The court then ordered a probation report which was filed on the 28<sup>th</sup> January, 2019. The same seems favourable to the Applicant.
4. I have also perused the judgment of this court dated 5<sup>th</sup> August, 2014. The same reduced the sentence from life imprisonment to 15 years imprisonment. The said 15 years was to run from the date of the high court decision and not from the period of the lower court's decision.
5. Contrary to the position taken by the Respondent in his preliminary objection, this court has the capacity to decipher the contents of Section 46 of the Prison Act. The provisions are clear and in the event that the prison authorities do not interpret and apply the same this court can be moved just like the applicant has done.
6. The Applicant's period of sentence runs from 5<sup>th</sup> August, 2014 for the next 15 years. Can it therefore be said that he has served a third of the sentence? I do not think so. If he had done so then the prison authorities would have acted on their mandate as provided by the provisions of section 46 of the Act.
7. Secondly, it would have been possible if the appellate court would have decided that the 15 years period run from the date of the lower court's decision. As it is the period run from the date of this court decision on appeal.
8. For the foregoing reasons the application is disallowed. The Applicant in any event should compute in conjunction with the prison authorities the period as mandated by the Act and I in doubt this court can be moved.

**Dated signed and delivered in open court at Kitale this 7<sup>th</sup> day of August, 2019.**

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**H. K. CHEMITEI**

**JUDGE**

**7/8/19**

**In the presence of:-**

**Mr Omoria for State**

**Applicant Present**

**Court Assistant – Kirong**

**Ruling read in open court**