



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT GARISSA**

**CRIMINAL MISC. APPLICATION NO. 50 OF 2019**

**AND NO. 52 OF 2019 (CONSOLIDATED)**

**MUGAO KINYIRI.....1<sup>ST</sup> APPLICANT**

**ERASTUS SYENGO KINYIRI.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. In the High Court Criminal Misc. No. 50 of 2019 – Mugao Kinyiri vs DPP and No. 52 of 2019 – Erastus Syengo Kinyiri vs DPP, the 2 applicants seek their sentence to factor in the period they were in custody during trial.
2. They were both charged with offence of murder. Particulars being in **Count 1** that, on 8/12/2014 at Siokereke village, Siokereke Location, Tseikuru Sub-County murdered **Japhet Mwinzi Kinyiri** and **Count II** on the same particulars murdered **Ruth Kanini Kimanzi**.
3. They were convicted on lesser offence of manslaughter and sentenced to serve 5 years each for each count to run concurrently.
4. They have moved the court to order that the 5 years period to run from the date of arrest or plea 17/12/2014. They were convicted and sentenced on 1/11/2018.
5. Though the State does not oppose, I find that the applicants were convicted with 2 counts of manslaughter and the sentences are to run concurrently.
6. The court when sentencing them took cognizance of the period applicants were in custody when it said, **“I appreciate the case was started in 2014, 4 years ago now. However the accused persons killed 2 people thus sentenced to 5 years imprisonment.”**
7. The sentence was by my co-equal Judge and to adjust his order on sentence will amount to revision of a High Court order which I have no jurisdiction to undertake under Article 165 of the Constitution of Kenya.
8. This court thus declines to order that the sentences to run from the date of arrest as sought by the applicants. They ought to seek the remedy in the Court of Appeal which is mandated to interfere with High Court decisions.
9. Thus court makes the following orders:

***i. The applications are rejected.***

***ii. The order to apply to both Misc. Application No. 50 and 52 of 2019.***

**DATED, DELIVERED AND SIGNED AT GARISSA THIS 30<sup>TH</sup> DAY OF OCTOBER, 2019.**

.....

**C. KARIUKI**

**JUDGE**