



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

CORAM: R MWONGO, J

CRIMINAL APPEAL NO. 62 OF 2015

(Being an Appeal from the Original Conviction and Sentence in Criminal Case No 3286 of 2012 in the Chief Magistrate’s Court, Naivasha, (E. Kimilu- Ag PM)

JOHN MWANGI WAWERU.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

R U L I N G

Having considered all issues arising in this case and the clarifications given in respect of the previous charges against the Applicant, and further taking into account that in the present case the Applicant was arrested and has been in custody since 27th October, 2012 till the date of his sentencing to imprisonment for 4 years on 17th April, 2015. I determine as follows:-

1. The Applicant has already served the full sentence in **CMCRC No. 5077 of 2012**.
2. The Applicant was in custody in the present case since **October, 2012**.
3. Overall the Applicant has spent **7 years in prison** and reasons for delay in processing the case and sentencing in the present case are not clear.
4. Given the concession by the prosecution that this case raises special circumstances, it is appropriate that the Applicant be deemed to have served his full sentence in the present case.
5. The Applicant shall be released forthwith unless otherwise lawfully held.
6. The determination herein arises from the Applicant’s Petition of Appeal limited to grounds of mitigation only, filed on 26th September, 2018. In the Mitigation Petition the Applicant states that he has served third of the sentence since incarceration. He also pointed out, orally, that he was arrested in 2012 and his case has proceeded very slowly, hence he has been prejudiced.

He added that he has reformed whilst in prison and received vocational training; and that he can be a resourceful person in society if given the opportunity. These matters commend themselves to me and I have duly taken them into account as they persuade me that the Applicant’s release will best serve justice in this case.

Dated and Delivered at Naivasha this 22nd Day of November, 2018

RICHARD MWONGO

JUDGE

Delivered in the presence of:

1. John Mwangi Waweru – Appellant in person

2. Mr. Koima for the State
3. Court Clerk – Quinter Ogutu