Logiel v Republic (Miscellaneous Application E014 of 2022) [2024] KEHC 780 (KLR) (1 February 2024) (Ruling)

Neutral citation: [2024] KEHC 780 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT LODWAR

MISCELLANEOUS APPLICATION E014 OF 2022

RN NYAKUNDI, J

FEBRUARY 1, 2024

BETWEEN

EMONI EPERIT LOGIEL ..... PETITIONER

AND

REPUBLIC ..... RESPONDENT

(Being a Review on Resentencing from the Judgement of the trial court in Cr. Case NO. 28 of 2005)

RULING

1 The petitioner was charged, convicted and sentenced to death for the offence of murder contrary to Section 203 & 204 of the *Penal Code* in CR. Case NO 28 of 2005. He appealed against the conviction and sentenced to the Court of Appeal in Eldoret Cr. Case No. 602 of 2010. The Appeal was dismissed on 23.5.2014. He subsequently filed a petition for re-sentencing based on the following facts:

1. That I was charged and convicted for an offence of robbery with violence c/section 295 as read with section 296(2) of the P.C and sentenced to suffer death sentence.

2. That High Court has competent jurisdiction to hear and determine this application under article 165(3) (b) of the *Constitution* of Kenya 2010.

3. That the court of appeal in *Bernard Mulwa Musyoka v Republic* or Appeal No 25 of 2016 affirmed that the Supreme Court did not prohibit court below it from ordering sentence re-hearing in any matter pending before those courts.

Prayers:

a. That the court be pleased to award me a lenient definite sentence article 50(2) (2) (p) (q) of the *Constitution* of Kenya

b. That: In regard to Petition No 618 of 2010 in Joseph Kaberia & 11 Others that declared death sentence unconstitutional, I do seek leave for sentence re-hearing only.

c. The Hon. Court be pleased to invoke the provisions of section 333(2) of the *C.PC* pursuant to *Vincent Sila Jona & 87 Others v Republic* in Petition No 15 of 2020 at Machakos.

2 The petition so filed and presented in court was expressed to be brought under Section 379 (4) 316, 357 of the *CPC* and article 48, 23 (1) 25 (c) 27(1) (4), 50(2) (p) (q) 159 (2) Section 7,18, 9, 9.1 of the Sentencing Guideline and 9.2 and 165 (3) (a) (b) of the 2010 Kenyan *Constitution*. The petition was duly heard and determined before Chemitei J on 3.3.2020 in which the petitioner was re-sentenced to 25 years imprisonment commencing from 28.10.2009.

3 As a consequence of this decision, I am of the considered view that section 333(2) of the *Criminal Procedure Code* is not applicable in this case. The doctrine of res-judicata frequently invoked in the realm of Civil Law is applicable to the circumstances of this latest application filed by the petitioner for a further re-sentencing. Speaking broadly, the rule of res-judicata means that when a court of competent jurisdiction has determined, on its merits a litigated cause, the judgement entered, until reversed, is forever and under all circumstances, final and conclusive as between the parties to the suit and their privies. In the instant petition every fact was properly considered in reaching a judicial determination of the issues in controversy in so far as the sentence imposed by both the trial court and subsequent decision on appeal. That same judgment was then a subject of re-sentencing by Chemitei J. Certainly, this court has no jurisdiction in law to entertain a subsequent petition on the same subject matter. The petition stands dismissed under section 382 of the *Criminal Procedure Code*.

4 Order accordingly.

DATED AND SIGNED AT LODWAR THIS 1ST DAY OF FEBRUARY, 2024

IN THE PRESENCE OF

YUSUF FOR THE STATE

APPELLANT PRESENT

.....

R. NYAKUNDI

JUDGE