



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

PETITION NO. E004 OF 2020

COLLIN RIOBA MUNYASA.....APPLICANT

-versus-

REPUBLIC.....RESPONDENT

RULING

Resentencing

[1] From the Notice of Motion filed herein, the Applicant prays for this court to grant him parole or probation. He states in Motion that he has reformed and should be given a second chance to be rehabilitated. He also states that he is a family man and the bread winner of his family. But from the affidavit in support, the applicant states that, despite the fact that this court (Bwonwong'a J.) reduced his sentence from 20 years to 10 years, it did not take into account the time he had spent in custody and had served in jail. He submits that this court has the power to reduce the sentence.

[2] M/S Torosi, the prosecution counsel opposed his application and termed it as an abuse of court process. She took the view that Muruatetu was considered by the court, and so he should go to the Court of Appeal instead of filing an application before this court. She asked the court to dismiss the application.

ANALYSIS AND DETERMINATION

[3] The decision of Muruatetu came as a relief to many prisoners who suffered under a law which stipulated only a mandatory sentence. As a consequence, I have seen many applications for resentencing being filed in court. But, it is now becoming apparent that a conversation must begin on; (1) the competency of some of these applications; and (2) possibility of abuse of process of court. The prosecution submitted that this application is an abuse of court process as Muruatetu had already been considered by the court. As a matter of law, post Muruatetu decisions are expected to take into account the principle in Muruatetu. Therefore, the applicant should appeal on sentence and make argument for reduced sentence.

[4] I am of the considered view that, since his appeal was heard and decided on 8th July 2020 by this court (**Bwonwong'a J.**) and sentence was one of the issues determined thereto, the applicant should file an appeal in the Court of Appeal and make argument for reduced sentence on the basis of section 333(2) of the CPC. He cannot come to this court through an application in the guise of a 'PETITION'. I find the application to be an abuse of process of the court. But before I make my final order and without sitting on appeal over this court's judgment, consider the following:

[5] Bwonwong'a J. delivered his judgment in appeal number 9 of 2019 by the applicant on 8th day of July, 2020. In the judgment, the judge stated: -

I find that the trial court failed to take into account that the appellant had been in remand for over four months. Section 333(2) of the Criminal Procedure Code (cap 75) Laws of Kenya mandatorily directs a court to take into account the period an accused has been in custody in sentencing him. Additionally, the sentence is manifestly excessive.

..... After taking into account both the aggravating and mitigating factors, I hereby impose a sentence of ten (10) years' imprisonment, which will begin to run from the date of this judgment''.

[6] One little reality: Section 333(2) of the CPC does not state how the court should take account of the time spent in custody. Nonetheless, the court (Bwonwong'a J.) dealt with that aspect. Accordingly, a challenge thereto should be made through an appeal to the Court of Appeal. In sum, the application herein is misplaced and therefore an abuse of court process. It is accordingly dismissed. It is so ordered.

Dated, signed and delivered at NAROK through Microsoft Teams Online Application this 8th day of February 2021

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F. GIKONYO

JUDGE

IN THE PRESENCE OF:

1. Ms. Torosi for the DPP
2. The applicant
3. Mr. Kasaso- Court Assistant

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F. GIKONYO

JUDGE