



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARISSA

REVISION APPLICATION NO. 111 OF 2019

ABDIAZIZ ADAN MOHAMED.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant **Abdiaziz Adan Mohamed** was charged in the Chief Magistrate's Court Garissa, in Criminal Case No. 1104 of 2012 with nine (9) counts. He was tried and convicted of counts 1, 2, 8 and 9.

In Count 1 and 2 the Applicant was convicted of engaging in acts intended to cause grievous harm contrary to Section 231 of the Penal Code.

2. Particulars of Count I were that on the 25th day of June, 2012 at Dagahaley Open Air Market near World Food Programme Distribution Centre in Dadaab District within Garissa County, jointly with others not before court, unlawfully and grievously harmed No. 87081 P.C (D) Victor Sikudi; an officer escorting CARE International Staff while on board GK A 386Y Toyota Land Cruiser by detonating an Improvised Explosive Devise.

Particulars of Count II were that on the same date, same place jointly with others not before court, he unlawfully and grievous harmly No. 66093 P.C Dismas Mogaka, an officer escorting CARE International Staff while on board GK A 387K Toyota Land Cruiser by detonating an Improvised Explosive Devise.

The applicant was sentenced to life imprisonment on the two counts

3. In Count VIII. The applicant was charged with the offence of malicious damage. Upon being sentenced on Count 1 & 2, he was discharged on this count. He was equally discharged on Count IX; residing outside non designated area being a refugee.

4. Being dissatisfied with the judgement the applicant appealed to this court on several grounds:

His appeal was heard and it succeeded on account of the sentences. The court affirmed the conviction and reduced the life imprisonment on both counts to 30 years imprisonment on each count. The sentences were to run concurrently meaning that he would serve 30 years in total.

5. The applicant is before this court seeking for a review of the 30 years and submits that this court has the power to review its orders. He made reference to Criminal Appeal No. 9 of 2016 a Malindi Case where the court reviewed its own orders.

6. The State opposed the application on grounds that this court heard the appeal and pronounced its verdict. Secondly that circumstances in the case cited were different from this case. Same is therefore not applicable.

7. The court agrees with the argument by the State that this court already made a decision after considering the facts of the case and the mitigating factors.

8. Indeed, by reviewing the sentence meted out by Dulu J this court will be sitting on appeal over the judgement of a court of concurrent jurisdiction which is not within the law.

9. The applicant had a recourse in the Court of Appeal if he was not satisfied with the revised sentence by this court. Appealing to the Court of Appeal is indeed the correct laid down process and cannot be deemed to be an inconvenience. Though there is time lapse since the decision of the High Court, the applicant can still try his luck as that is the only available option him.

10. The application is found to have no merit. It is dismissed.

DATED, DELIVERED AND SIGNED AT GARISSA THIS 15TH DAY OF JULY, 2021.

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ALI-ARONI

JUDGE