



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT VOI

CRIMINAL MISCELLANEOUS CASE NO. E013 OF 2020

ALFRED NJURUKA MAKOKO.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. Application herein is brought under Article 50(2) (p) & (q) which provides:-

“Every accused person has the right to a fair trial which includes the right.

(p) to the benefit of the least severe of the prescribed punishment for an offence, if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and

(q) if convicted, to appeal to or apply for review by a higher court as prescribed by law”.

2. Applicant seeks for revision of his sentence for reasons that he has spent considerable period of time in prison and that he had duly reformed having undergone counseling on anger management, alternative to violence projects, peer education among other courses in the correctional facility.

3. He averred that the period he spent in custody be factored in his sentence and that he should be considered as a 1st offender. He said he was elderly and has some health issues which are bothering him. He said he regretted the occurrence of the incident and requested to be forgiven and given a second chance in life.

4. The applicant was sentenced to serve 40 years imprisonment after the trial court considered his mitigation and as the Court of Appeal said in **CR. A. Nos. 30, 31, 32 & 33 of 2015 – Mohammed Dadi Kokane & 3 Others vs Republic [2019] eKLR** at page 7 paragraph 36

“We note that the trial court issued the same after taking into considering the appellants’ mitigation and exercising its discretion in accordance with the holding of the Supreme Court in Francis Karioko Muruatetu & Another vs Republic [2017] eKLR and in our view the sentence is sound”

5. The trial Magistrate exercised her discretion in passing the sentence and instead of making an order for death sentence which is the maximum she committed the applicant to serve 40 years in jail. This court cannot interfere with that discretion which passed the test in Court of Appeal and in Voi High Court CR. Misc. Application No. 2 of 2019.

6. The application to revise sentence therefore fails save that the sentence may take effect from date when applicant was arraigned in court subject to confirmation of date when arraigned and that when he was arraigned in court he was not released on bond.

7. Orders accordingly.

DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE BY MS TEAMS, THIS 15TH DAY OF JULY 2021

HON. LADY JUSTICE A. ONG’INJO

JUDGE

In the presence of:

Ogwel – Court Assistant

Respondent – Ms. Karanja hold brief for Mr. Chirchir

Petitioner – No appearance

Hon. Lady Justice A. Ong'injo J

15/7/20201