



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARISSA

CONSOLIDATED MISC. CRIMINAL APPLICATIONS NO. 105 OF 2019, 2 OF 2020 & 5 OF 2020

JAMES MUSEE MWOVE.....1ST APPLICANT

JOHNSON MUTHUI MUTINDA.....2ND APPLICANT

PETER MUTHUI MUTINDA.....3RD APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The three Applicants in the consolidated matters; Misc. Criminal Application Nos. 105 of 2019, 2 of 2020, and 5 of 2020 were initially charged with the offence of robbery with violence contrary to section 296(2) of the Penal Code in SRM's Court at Mwingi in Criminal Case No. 241 of 2019.

The particulars of the offence being that the three, **James Musee Mwove, Johnson Muthusi Mutinda and Peter Muthui Mutinda**, on the 9th of March 2009 at Makutano village, Mwalali Sub-Location, Mbuvu Location, Nguni Division in Mwingi District within Eastern Province being armed with dangerous or offensive weapons namely knives, robbed Cleophas Mutinda Sua cash Shs.325,000/- and a motorolla mobile phone worth Shs.2,600/- and at or immediately before or immediately after the robbery stabbed the said Cleophas Mutinda Sua.

2. The applicants pleaded not guilty to the offence, the trial court upon hearing the case convicted them and sentenced them to suffer death.

3. Dissatisfied with the decision of the trial court the trio preferred an appeal to this court which appeal was dismissed.

4. The applicants appealed to the Court of Appeal which affirmed the conviction and reduced their sentences to 20 years imprisonment each.

5. The applicants seem still dissatisfied with the reduction of sentence and each separately moved this court, this time asking the court to consider reducing the sentences further by invoking the provisions of Section 333(2) of the Criminal Procedure Code.

6. After the Court of Appeal's decision, the applicants exhausted the avenue of raising their grievances as the current issue is neither a matter of great public importance nor raising a Constitutional issue of importance to be referred to the Supreme Court.

7. The applications before this court appear to be a desperate move to seek to reduce the number of years the applicants are to serve in jail.

8. The applicants ought to appreciate that the court as an institution operates in an organized and systematic manner, following laid down procedures. So that a party aggrieved by a subordinate court's decision moves to the High Court and when aggrieved by the High Court one moves the Court of Appeal unless in matters of resentencing as was raised in the decision of **Francis Karioko Muruatetu & Others vs Republic [2015] eKLR** otherwise a party cannot move in reverse.

9. This matter was dealt with by a court of concurrent jurisdiction. It went to the Court of Appeal where the sentences were reduced from death sentence to 20 years imprisonment.

10. As urged by the State the issue of sentencing was canvassed on appeal and determined. The applicants had an opportunity then to raise the issue of Section 333(2) at the time for consideration by the Court of Appeal.

11. This court therefore cannot now sit over an appeal against the decision of the Court of Appeal.

12. Important also is that there has to be an end to any trial. Convicts must desist from referring matters to court any time they assume that they left out a point.

13. Based on the above, the court finds the applications in the consolidated Misc. files 105 of 2019, 2 of 2020 and 5 of 2020 without merit. The same are dismissed.

DATED, DELIVERED AND SIGNED AT GARISSA THIS 8TH DAY OF JULY, 2021.

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ALI-ARONI

JUDGE