



REPUBLIC OF KENYA

HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS CRIMINAL DIVISION

MISC CR APPL NO. 242 OF 2019

THOMAS MUTUNE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. By an application dated 24th April 2019, the applicant seeks that, the period he spent in custody be considered pursuant to section 333(2) of the Criminal Procedure Code.

2. I have considered the application in the light of the historical background of the facts herein. The facts reveal that, the applicant was convicted over the offence of trafficking in narcotic drugs contrary to section 4(a) of the Narcotics Drugs and Psychotropic Substances Control Act No. 4 of 1994, and sentenced by Hon. Oginjo Chief Magistrate (as she then was) to serve thirty (30) years imprisonment.

3. He appealed against both conviction and sentence. The appeal was heard vide criminal appeal number 168 of 2016. The appeal was heard by Hon Justice Kimaru who rendered a decision therein on 13th March 2019, and dismissed the appeal on conviction but allowed the same on sentence. The sentence was thus reduced from thirty (30) years to fifteen (15) years.

4. Being dissatisfied with the decision of the High court, the appellant moved to the Court of Appeal vide criminal application number 126 of 2019. The Appeal was heard and dismissed in its entirety.

5. He now seeks for review of sentence as aforesaid. Having considered the application, I find that it has no merit. First and foremost, Hon. Justice Kimaru stated as follows in the judgment rendered:

“For the avoidance of doubt, the period that the appellant was in custody during trial has been taken into account. it is so ordered”

6. Furthermore, the Court of Appeal stated in its judgment as follows:

“In the record before us, the appellant was granted bail by the trial court and he did not escape from custody after he was convicted and sentenced”

The court then dismissed the ground of Appeal based on section 333(2) of Criminal Procedure Code as having no basis at all.

7. Therefore, to attempt to approach the court again on the same ground is an abuse of the court process. On that ground alone, the application is dismissed for lacking merit.

8. Moreover, the matter having been dealt with by the Court of Appeal is *functus officio* and lacks jurisdiction.

9. The upshot is that; the application is dismissed. Further pursuant to the decision in Muruatetu, re-sentencing is on murder cases only. I therefore order that this file be marked as closed.

It is so ordered.

DATED, DELIVERED VIRTUALLY AND SIGNED THIS 20TH DAY OF SEPTEMBER, 2021

GRACE L. NZIOKA

JUDGE

In the presence of:

Ms Kibathi for the Respondent

Applicant present in person

Edwin Ombuna – Court Assistant