



REPUBLIC OF KENYA

HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS CRIMINAL DIVISION MISC CR APPL NO 458 OF 2019

MOHAMED KARANJAAPPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

COURT

1. By a chamber summons application filed in court on 22nd February 2021, the applicant is seeking for orders that, the court takes into account any clemency factor beforehand, and have him reprieved.” Further, the court may factor his period in custody of four years from 15th August 2015 to May 2019 into account, while reviewing sentence. He relies on the provisions of section; 333 (2) of the Criminal Procedure Code. Finally, the applicant prays that, the decision in the case of Muruatetu be considered and the sentence be reviewed accordingly. He mitigates by stating that, the court should consider his health status, age and the fact that, he is a first offender. The application is supported by an affidavit sworn by the applicant, wherein he avers that, he was the accused in Criminal Case Number 4028 of 2015, charged with the offence of robbery with violence contrary to section 296(2) of Penal Code. He was tried, convicted and sentenced to ten (10) years imprisonment. He further avers that, there is no research or instrument that shows, that an inmate cannot reform. He has a clean record from penance system which is adequate personal mitigation.

2. However, the application was opposed by the Respondent based on grounds of appeal dated 18th May 2021 to the effect that, it lacks merit, is not arguable and has no overwhelming chances of success. That the appellant was properly convicted upon the prosecution discharging its burden of proof.

3. The appellant was positively identified during the trial, and that his defence was duly considered.

4. Having considered arguments advanced by both parties, I first of all wish to clear what may appear to be a confusion as to the matter before the court. This is informed by the fact that, when the applicant filed the chamber summons application dated 3rd October 2019, he also filed a petition of appeal supported by grounds thereof. Apparently, before the same were dealt with, the applicant filed another Chamber summons application on 22nd February 2021. As though the applicant was on a spree of filing applications, another application was forwarded to the court by the officer – in –charge Government of Kenya Prison Kitengela and filed in court on 3rd August 2021. That application is described as a notice of motion application and accompanied with an affidavit and submissions. It is therefore not clear which application is for consideration and determination. Secondly, it does not explain why the Respondent filed a response to the appeal. However, this matter cannot be a subject of appeal as the appeal has never been admitted to hearing. Be that as it were, having considered the entire matter in the light of the materials before the court, I find that the application(s) is or are not tenable for the following reasons:

a. The Supreme Court decision of Muruatetu (see 2017 Eklr) is no longer applicable in relation to the charge of robbery with violence contrary to section 296(2) of Penal Code, Pursuant to the Supreme Court of Kenya *decision in the same case dated 6th July 2021*, which clarified that re-sentencing applies in relation to sentence in murder offences only.

b. The provisions of section 333(2) of Criminal Procedure Code can only be considered by the Court meting out *the sentence not the appellate Court where there is no appeal on sentence*.

c. The powers of the appellate court (HC0 under Section 362 of CPC do not empower it to review sentence on the basis of non-

compliance with the provisions of Section 333(2) of Criminal Procedure Code.

5. The upshot is that, I find no merit in the subject application(s) herein and I dismiss all of them (on consolidated basis) in their entirety.

DATED, DELIVERED VIRTUALLY AND SIGNED THIS 5TH DAY OF OCTOBER, 2021

GRACE L. NZIOKA

JUDGE

5th October 2021

In the presence of:

Ms Chege for the Respondent

Applicant present in person

Edwin

Ombuna

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Court

Assistant