



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

CRIMINAL REVISION NO. E009 OF 2020

CHARLES GITONGA MAINA.....APPLICANT

VERSUS

REPUBLIC.....PROSECUTION

(From original conviction and sentence in Criminal Case No.

769 of 2020 of the Principal Magistrate's Court at Wang'uru)

RULING

1. A brief outline of the case was that the Applicant Charles Maina Gitonga was jointly charged with two others for the offence of robbery with violence contrary to Section 296(2) of the Penal Code and sentenced to death at Wanguru PMCC Criminal Case NO. 769 of 2020.

His appeals at both the High Court in Kerugoya in Cr Application No. 191/2013 and Court of Appeal No. 78/2014 were dismissed.

2. He petitioned the High Court for resentencing pursuant to the Supreme Court decision in **Francis Muruatetu v Republic [2017] eKLR**. His sentence was commuted from death penalty to a sentence of 25 years in prison in Kerugoya **High Court Criminal Revision No. 10 of 2019**. He has urged for revision of the 25 years sentence and prays for either probation or lesser sentence and a consideration of the period he served in custody, from the date of his arrest up to judgment date. He relied on his written submissions while the prosecution made oral arguments before the court. I have carefully considered the submissions, against the application filed on the 17th November, 2020.

3. I have also considered the re-sentencing ruling dated 30th July, 2020 (Gitari J.). In the said judgment, the court at the last paragraph (10) of the Judgment pronounced itself thus:

“having taken into consideration the circumstances of this case and the authorities I have cited, a sentence of 25 years is appropriate. The sentence be computed from 18th October, 2010 the date he was arraigned in court and remanded in custody during the entire trial. Section 333(2) Criminal Procedure Code refers”.

4. Looking at the Applicants application, he seeks a further review to reduce the sentence meted to him upon the re-sentence hearing, and or order for a non-custodial sentence, and lists his reasons which are the mitigating factors he tendered before the re-sentencing court.

5. Criminal Revision is based on the provisions of Section 333(2) of the Criminal Procedure Code. It provides for consideration by taking into account the period an accused person has spent in custody prior to the judgment date. There is no doubt that the trial court did so. See paragraph 18 of the ruling dated 30th July, 2020. That complaint therefore fails.

6. The other ground for the application is that the Applicant prays that the remaining sentence be commuted to a probation non-custodial sentence, and relies once again on the mitigating factors. For an application for revision of a criminal judgment, the application must satisfy the court as to what he deems to be the error the trial court may have made that the appellants court ought to consider and if found genuine, to correct it – **Criminal Revision No. 4 of 2020 Eliud Njure Gatura Vs Republic**.

7. Considering the facts of this application, nothing has been placed before this court to necessitate a revision of the ruling dated 30th July, 2020. To allow or even to consider the applicant's application would be sitting on appeal on the said ruling which is against the law. An appeal against the re-sentence to reduce the terms would have been more appropriate.

For the above reasons, I find no merit in the application for revision filed on the 17th November, 2020. It is dismissed.

DATED AND SIGNED THIS.....DAY OF..... 2021

HON. J. N. MULWA

JUDGE

DELIVERED AT KERUGOYA THIS 11TH DAY OF NOVEMBER 2021

HON. R. MWONGO

JUDGE