



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT GARISSA**

**HCCRMISC APPLICATION NO. E008 OF 2020**

**MAHAT ISSACK ABDILLE.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The Applicant **Mahat Issack Abdille** and one other were charged with two counts both, being in possession of ammunition in contravention of the Firearms Act and sentenced to 7 years on each count which term was to run concurrently.
2. An appeal was preferred to this court where the second appellant was placed on probation and the current applicant's 7 years jail term set aside, his time in custody considered and in place of seven years he was to serve 6 years from time of his arrest.
3. No appeal was preferred against this court's judgement. Instead, the Applicant has moved this court by way of an application seeking a further variation of his jail term, on grounds that he wishes to serve the remainder of his sentence in Community Service (C.S.O). When the application was filed on 12<sup>th</sup> November 2020, the Applicant had served 3 years of the jail term.

At the hearing of the application the Applicant submitted that he has 10 children 3 of who are in High School and he is the only breadwinner.

Further that he received a remission of 2 years and has 8 months.

4. The State filed grounds of opposition to the effect that the application is an abuse of court process. Appeal No. 16 as consolidated with 17 of 2019 addressed the issue of sentence.
5. The State is right in that on appeal this court addressed the issue of sentence for both the Applicant and his co-accused who is the wife; mother of his children. And due to the unique circumstances, the wife got away with a very lenient sentence to allow her to go out and cater for their children.
6. Procedurally and legally, this court cannot sit on appeal over its own decision. If dissatisfied the Applicant ought to have preferred an appeal to the Court of Appeal.
7. The fact that the Applicant has 10 children and is a breadwinner was considered when the appeal was heard and the court meted out a less severe punishment on the Applicant's spouse to alleviate the hardship their children were likely to face.

Further I dare say, that when contemplating a crime, one should consider the likely repercussions including hardship that a family is likely to suffer so that it should not be a feature in the process of trial.

8. This court has no power or discretion for now to interfere with the sentence and for reasons stated above the application is dismissed.

**DATED, DELIVERED AND SIGNED AT GARISSA THIS 11<sup>TH</sup> DAY OF NOVEMBER, 2021.**

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**ALI-ARONI**

**JUDGE**