



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CRIMINAL REV. NO. 76 OF 2019

RICHARD OLOO OTIENO 1ST APPLICANT

RICHARD ORICHO ONYANGO2ND APPLICANT

JARED OCHIENG JURA3RD APPLICANT

-VERSUS-

REPUBLIC RESPONDENT

RULING

The Applicants, **RICHARD OLOO OTIENO, RICHARD ORICHO ONYANGO** and **JARED OCHIENG JURA** have sought the review of the sentence which this court handed down to each of them during a hearing on re-sentencing.

1. They have asked the court to give consideration to Equality and Freedom from Discrimination. Although it is not clear why they consider themselves to be victims of either inequality or of discrimination, I presume that they mean that some other persons who had originally been sentenced to death, but who were thereafter re-sentenced, had been given lower sentences.
2. In my considered view, each case must always be considered within its own facts and circumstances.
3. If the court handed down a sentence which was lawful, and gave appropriate reasons for the said sentence, it cannot be said that the person who had been so sentenced was either discriminated against or was treated in an unequal manner, just because in a separate case, a different person was given a lesser sentence for the same kind of offence.
4. Inequality and discrimination may arise if accused persons, who were tried in the same case, and whose involvement in the crime was similar, were accorded different sentences, without the court giving appropriate reasons to explain such differences in the sentences.
5. When a person held the considered view that the court had erred, in law or otherwise, in the sentence it handed down, the person could consider challenging the decision through an appeal.
6. The fact that the person had undergone rehabilitation in prison, is not a basis for asserting that he has a right to have the sentence reviewed.
7. Similarly, when a person became sick whilst serving imprisonment, that fact alone does not give rise to a right to have his sentence reviewed.
8. Persons who have been sentenced to imprisonment are accorded an opportunity to learn various trades and courses. The process empowers them, whilst keeping them busy, as they reflect on their past actions.
9. But just because a person had gained some qualifications, does not entitle him to have his sentence reviewed downwards.
10. In this case, the court already gave due consideration to all the factors which each of the Applicants had placed before me. Having undertaken the requisite evaluation of the Applicants' respective circumstances, the court re-sentenced each of them to **30** years imprisonment.
11. There is no basis in law or in fact, to warrant a further review of the sentence that was handed down during re-sentencing.
12. Accordingly, the application is dismissed.

DATED, SIGNED and DELIVERED at KISUMU

This **19th** day of **February** 2020

FRED A. OCHIENG

JUDGE