



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

MISC. CRIMINAL APPLICATION NO. 2 OF 2020

NANCY WANJA MIANO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

A. Introduction

1. The applicant herein moved the court vide a notice of motion dated 20/01/2020 and filed in court on 29/01/2020 under certificate of urgency wherein the applicant sought orders that the period she had remained in prison be considered in her sentence emanating from the judgment in Embu Criminal Case. She relied on Section 333(2) of the Criminal Procedure Code and deposed in her supporting affidavit that she was charged at Embu High Court with the offence of manslaughter vide Criminal Case No. 26 of 2015 and sentenced to seven (7) years imprisonment and that at the time of the said sentence, the time the applicant had spent in remand of ten (10) months was not considered despite her never being out on bond or bail.

2. Ms. Lokorio for the respondent submitted that she was not opposed to the application and urged the court to grant the order sought.

B. Analysis of the law

3. I have considered the application, the oral submissions made during the hearing by the applicant as well as the written submissions and find that the main issues for determination are as follows: -

a) Whether this court has the requisite jurisdiction to entertain this application.

b) If so, whether the application is merited.

4. The applicant was convicted of the offence of manslaughter contrary to Section 202 of the Penal Code by this court and sentenced to serve seven (7) years imprisonment. There is no information as to whether he may have appealed this court's decision.

5. It is trite law that a court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. I note that the sentence which the applicant seeks to review was passed by this Honourable Court upon conviction of an offence of manslaughter. As such the applicant is basically seeking that this court do review its own decision regarding sentence.

6. Article 164(3) of the Constitution bestows the Court of Appeal with jurisdiction to hear appeals from the High Court; and any other court or tribunal as prescribed by an Act of Parliament. Section 379(1) of the Criminal Procedure Code further provides that: -

“A person convicted on a trial held by the High Court and sentenced to death, or to imprisonment for a term exceeding twelve months, or to a fine exceeding two thousand shillings, may appeal to the Court of Appeal—

a) against the conviction, on grounds of law or of fact, or of mixed law and fact;

b) with the leave of the Court of Appeal, against the sentence, unless the sentence is one fixed by law.

7. It is my considered opinion that the right forum to seek for review of the order of this court is in the Court of Appeal.

8. It is my considered opinion that the instant application is misconceived and incompetent and that this court does not have jurisdiction to entertain it.

9. Consequently, this application is hereby struck out for want of jurisdiction.

10. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 11TH DAY OF JUNE 2020

THROUGH VIDEO LINK BETWEEN THIS COURT, EMBU PRISON AND OFFICE FO DIRECTOR OF PUBLIC PROSECUTIONS.

F. MUCHEMI

JUDGE

In the presence of: -

Ms. Mati for Respondent

Petitioner