



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

MISCELLANEOUS CRIMINAL APPLICATION NO. 123 OF 2019

THADDAEUS WEKESA MAKOKHA.....APPLICANT

VERSES

REPUBLIC.....RESPONDENT

RULING

1. The Applicant was convicted and sentence to a five years' imprisonment vide Criminal Case No. **Kitale 1035 of 2012**. His appeal to this court failed. He has therefore filed this application dated 3rd September 2019 praying that he be allowed to serve the remaining period of his prison term under Probation.
2. In his Supporting Affidavit the Applicant has attached several Medical documents which shows that he has been suffering from serious ailments which has resulted into *poor alignment of spinal column*.
3. These include various letters and Medical summary by **DR F. NABONGO**, of Kitale County Referral hospital among others. There is also a letter from the Officer in Charge Kitale Main Prison dated 28th September 2020 which gives a chronology of the Applicant's ailment.
4. When this matter came up the learned state counsel did not object to the same but left it to the discretion of this court.
5. **Rule 27(2)** of the Prisons Rules Chapter 90 laws of Kenya states as hereunder;

“The Medical Officer shall advise the Officer in charge as to any prisoner who should be released by reason of his health being likely to be endangered by his remaining in prison, or his being unlikely to survive his sentence or being permanently unfit for prison discipline.”

6. Considering the above facts and the fact that the court was able to see the Applicant in court, this application is meritorious.
7. The Applicant is therefore set free unless lawfully held. He shall serve the remainder of the term under Probation as per the directions of the relevant Probation Officer.
8. Orders accordingly.

Dated, signed and delivered at Kitale this 1st day of October 2020.

H. K. CHEMITEI

JUDGE

1/10/2020

In the presence of:

Miss Mumo for Respondent present

Applicant present

Court Assistant – Kirong

Ruling read in open court