

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO.214 OF 2018

ELIJAH MURIMI MITHAMO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Elijah Murimi Mithamo was charged and convicted of the offence of **attempted suicide** contrary to **Section 226** as read with **Section 36** of the **Penal Code**. The particulars of the offence were that on 3rd December 2014 at Gaitumbi Village, Kinoo in Nairobi County, the Appellant attempted to kill himself by hanging himself on the neck using a sisal rope. He was also charged and convicted of the offence of **attempted murder** contrary to **Section 220** of the **Penal Code**. The particulars of the offence were that on the same day and in the same place, the Applicant attempted to kill GF, a child aged two years by hanging the said GF using a sisal rope on his neck. In respect of the first count, the Applicant was sentenced to serve one (1) year imprisonment. In respect of the second count, the Appellant was sentenced to serve life imprisonment.

The Applicant filed an application before this court seeking extension of time to file appeal out of time. In the application, the Applicant indicated that he did not file the appeal in time because he was waiting for his relatives to hire a lawyer to act on his behalf. The family did not come through until the period that he ought to have filed the appeal had expired. This court is satisfied with the explanation given by the Applicant for his failure to file the appeal in time. He is therefore granted leave to file an appeal out time. The Applicant should file and serve the petition of appeal within seven (7) days. During the hearing of the application, this court was informed by counsel for the Applicant that the Applicant intended to mitigate his sentence rather than proceed with the appeal challenging his conviction and sentence. Indeed, learned counsel went ahead and mitigated the sentence. When this court retired to write its Ruling, it became apparent that there was no basis upon which this court could have allowed the Applicant to mitigate his sentence yet there was not application on record for the court to give such consideration. The submission made on mitigation of sentence was therefore prematurely made.

In the premises therefore, this court sets aside the said proceedings where the Applicant purports to mitigate his sentence in an application for extension of time to file appeal out of time. The Applicant is at liberty to file an appropriate application for this court's consideration of his sentence including, if he chooses to, to file an appeal seeking the review of his sentence after the court considers his mitigating circumstances. In conclusion therefore, this court grants the Applicant's application for extension of time to file an appeal out of time. The court however declines the invitation made by the Applicant for the review of his sentence. This is because the said application was made in the wrong proceedings. Those are the orders the court shall issue in the circumstances. It is so ordered.

DATED AT NAIROBI THIS 8TH DAY OF MAY 2019

L. KIMARU

JUDGE