



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

MISC. CRIMINAL APPLICATION NO. 14 OF 2019

CRISPUS SINDANI AND 4 OTHERS.....APPLICANTS

VERSES

REPUBLIC.....RESPONDENT

RULING

1. By their notice of motion dated 21st January, 2019 the Applicants prayed that they had served one year out of their 3 years sentence and they had been of good conduct hence they should be released and be allowed to serve the remainder of the sentence under probation.
2. The Applicants had been charged with the offence of Arson Contrary to Section 332 (a) of the Penal Code. This court then asked the Probation Department to file a report in respect of the Applicants which reports were filed on the 24th April, 2019 and it recommended that they can be released and to serve the remainder of the term under their supervision.
3. The Respondent vide the learned state counsel Mr. E.P. O. Omooria has opposed the same vide the replying affidavit sworn on 24th April, 2019 arguing that the prayers are not available to the Applicants since they have not served a period of 2 years. He stated that the Applicants have not appealed against the sentence neither have they applied to have the same reviewed.
4. The law regarding remission is found in **Section 46 of the Prisons Act cap 90 Laws of Kenya**. The same states that:

“(1) convicted criminal prisoner sentenced to imprisonment, whether by one or consecutive sentences, for a period exceeding one month, may by industry and good conduct earn a remission of one third of their sentence or sentences.

Provided that in no case shall-

(I) any remission granted result in the release of a prisoner until he has served one calendar month;

(II) any remission be granted to a prisoner sentenced to imprisonment for life or for an offence under section 296(1) of the penal code or to be detained during the pleasure of the president.

(2) For the purpose of giving effect to the provisions of sub section (1), each prisoner on admission shall be credited with the full amount for remission to which he would be entitled at the end of his sentence if he lost no remission of sentence.

(3) A prisoner may lose remission as a result of its forfeiture for an offence against prison discipline, and shall not earn any remission in respect of any period –

(a) spent in hospital through his own fault ; or

(b) While undergoing confinement as a punishment in a separate cell.

(4) A prisoner may be deprived of remission –

(a) where the commissioner considers that it is in the interest of the reformation and rehabilitation of the prisoner;

(b) Where the cabinet secretary for the time being responsible for internal security considers that it is in the interest of public security or public order.

(5) notwithstanding the provisions of subsection (1) of this section ,the commissioner may grant a further remission on the grounds of exceptional merit, permanent ill-health or other special ground.(Act no. 25 of 2015)”

5. In view of the above provisions do the Applicants deserve the orders they have sought? It is clear that they have only served one year or thereabouts since they were sentenced. Clearly they have not served a third of the anticipated 3 years. In line with the aforestated provisions of the law they shall only be entitled to after serving at least 1/3 of the term.

6. The above entitlement does not come automatically. It is conditional upon the applicants satisfying the prison authorities that they have been of good conduct and discipline. A liberal reading of the said law presupposes that the prisons authorities input is of paramount importance. It thus behoves any prisoner who intends to enjoy such remission to behave and cooperate well while under the prison custody.

7. In the case at hand I think the line taken by the learned state counsel is true to the extent that the Applicants though they merit the remission have not served the third of their sentence. Neither have they filed any appeal or apply for revision.

8. In the premises the application is hereby disallowed.

9. This court takes judicial notice that there have been so many such applications pending at the registry. This ruling should be served on the applicants and those who intend to do so. Based on the same they should be able to do a computation and if they think they have not attained the measure anticipated they should gracefully withdraw the application and apply at the appropriate time.

10. Meanwhile so as not to clog the registry the prison authorities should apply this law on remission without waiting for the prisoners to apply to the court. The law as can be deduced empowers them to do so.

11. This ruling may be supplied to the prisoners freely.

Dated signed and delivered in open court at Kitale this 6th day of June 2019.

H. K. CHEMITEI

JUDGE

6/6/19

In the presence of:-

1st – 5th Applicant – present

mr Omoria for Respodnent

Court Assistant – Emily

Ruling read in open court.