



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**(CORAM: CHERERE-J)**

**CRIMINAL APPLICATION NO. 13 OF 2019**

**IN THE MATTER OF ARTICLES 20, 22, 23, 25, 27, 50 (2) AND 165 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF SECTION 134, 137A AND B AND 261 OF THE CRIMINAL PROCEDURE CODE**

**BETWEEN**

**SAMSON OCHIENG OGAJA.....APPLICANT**

**AND**

**REPUBLIC.....RESPONDENT**

**JUDGEMENT**

1. The Applicant was initially convicted to death and was resented in Kisumu High Court Criminal Petition No. 81 of 2018 to serve 30 years.
2. He has moved this court for remission and direction concerning the sentence that was left abeyance.
3. On appeal, the death sentence on count 1 was upheld and the sentence on count 2 and 3 was reduced to 2 years each.
4. Section 14 of the Criminal Procedure Code Chapter 75 Laws of Kenya provides that in the event that a person is convicted of more than one offence, the sentences imposed for each of the offences run consecutively except where the court directs that they run concurrently.
5. It therefore follows that the sentence of two years on count 2 and 3 are to run concurrently with the 30 years that the Petitioner has been re-sentenced in count 1.
6. The issue of remission under Section 46 of the Prisons Act (*the Act*) has been determined in innumerable cases and I will not belabor the point that remission of sentence is available to all convicted criminal prisoners unless excluded by operation of Section 46 (3) and (4) of *the Act*.

**Disposition**

7. Consequently, the application succeeds and the court orders that **the sentence of two years on counts 2 and 3 is to run concurrently with the 30 years that the Petitioner has been re-sentenced in count 1.**

**DATED AND DELIVERED IN KISUMU THIS 09<sup>th</sup> DAY OF October 2019**

**T.W. CHERERE**

**JUDGE**

**Delivered in open court in the presence of-**

**Court Assistant - Amondi/Okodoi**

**Petitioner - Present in person**

**For the Respondent - Ms. Gathu**