

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CR. APPLICATION NO. 217 OF 2016

JOHN W. BISHOP..... APPELLANT

VERSUS

REPUBLICRESPONDENT

RULING

The application is by Notice of Motion dated 9th June, 2015, brought under **Article 50 of 2010 Constitution** and other enabling provisions of the law. The prayers sought are that the sentence meted against the Applicant be computed to the time spent in incarceration, a review of the ruling in Miscellaneous Criminal Application No.134 of 2014 and any orders in the interest of justice. The main ground on which the application is premised is that the Applicant is currently of extreme ill health and he requires specialized treatment outside the prison facility.

The application is supported by the Applicant's own affidavit sworn on 9th June, 2016. Annexed to it is a ruling of Hon. Kimaru, J dated 16th June, 2015 in Misc. Cr. Application No. 134 of 2014. In that application, the Applicant sought a revision of his sentence citing ill health that entitled him to a remission of the sentence. The application was dismissed. Subsequently, the Applicant filed correspondence from the prison as a testimony that he was indeed suffering from an illness that cannot be adequately catered for within the prison facility. I shall revisit the same hereafter in the ruling.

Learned Counsel for the Applicant, Mr. Swaka pleaded with the court to allow the Applicant to go back to his country, USA for specialized treatment. He noted that the application in Misc. Cr. Application No. 134 of 2014 was dismissed on ground that the Applicant was not remorseful, but was now remorseful. Further, that the condition the Applicant was suffering from was unique. He urged the court, purely on humanitarian grounds to allow the application.

Learned State Counsel Miss Aluda for the Respondent opposed the application. She submitted that the Applicant was convicted for the offence of trafficking in narcotic drugs. He was sentenced to thirteen (13) years imprisonment which was extremely lenient in the circumstances. In any case, this far, the Applicant had only served three (3) years in jail which was such a short period that did not warrant a revision of the sentence. Miss Aluda was also of the view that the Applicant was only suffering from Tuberculosis (TB) which was not a unique condition and could adequately be handled in the prison.

I have considered the rival submissions. Let me emphasize that I have no jurisdiction to review my own brother, Hon Kimaru, J's ruling of 16th June, 2015. The Applicant had appeared before him for hearing of this application but the Judge declined to hear him as similar prayers were canvassed before him in the said Misc. Cr. Application No. 134 of 2014. That being the case, the appropriate approach after the dismissal of the application in Misc. Cr. Application was to appeal the ruling. But in the interest of justice, I will consider the issues raised herein.

A letter by Dr. Isoe, Director in-charge of Prisons in Nairobi dated 9th March, 2016 outlines the nature of illness the Applicant has been suffering from. The letter has indicated that the prison together with KNH have been managing the illness well. In contrast, the letter dated 26th July, 2016 from officer in charge Nairobi West Prisons indicates that the Applicant gets his drugs from outside the country. It is surprising

that the doctor himself did not state that the Applicant's drugs are procured from outside the country. Be that as it may, it is clear from the doctor's letter that the conditions the Applicant has been suffering from have been adequately catered for. In fact, as at 9th March, 2015, the TB had cured.

I reiterate Hon. Kimaru, J's sentiments that the offence for which the Applicant was convicted is serious and he escaped with a paltry 13 years imprisonment which was extremely lenient. Given the seriousness of the offence, it is my view that the illness alone is not a mitigating factor to warrant a revision of the sentence. He should serve the full term of the jail term. The application is accordingly dismissed with no orders of costs.

DATED AND DELIVERED AT NAIROBI THIS 10TH OCTOBER, 2016.

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

- 1. Applicant in person.*
- 2. Miss Atina for the Respondent.*