

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

MISCELLANEOUS CRIMINAL APPLICATION 149 OF 2012

PETERSON KINYANJUI KUNENEAPPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

1. The Applicant **Peterson Kinyanjui Kunene** was convicted of the offence of manslaughter contrary to **Section 202** as read with **Section 205** of the **Penal Code** and sentenced to three years imprisonment in **Cr. Case No. 124 of 2004 at Kibera**.
2. The applicant prays that the honourable court be pleased to review the (3) three years imprisonment sentence imposed against him, and substitute it with a non-custodial sentence.
3. In mitigation the applicant told this court in his petition dated 19th March 2012 that he is utmostly remorseful and truly contrite, and that he is the sole bread winner for his two school going children. He also submitted that his business has crumbled since his incarceration. Further that his residential house in Syokimau was demolished rendering his family homeless, and he needs to follow-up compensation, since he is the custodian of the ownership documents. The applicant also told the court that he is asthmatic and that the condition had worsened due to the harsh living conditions in prison coupled with the unavailability of the expensive drugs that he needs. Lastly that he is a first offender who has reformed and prays for lenience and mercy.
4. It is commendable that our prison facilities are availing progressive intervention measures to the inmates to aid in their rehabilitation, and that the applicant has been a beneficiary thereof. Rehabilitation is however, only one object of a prison sentence. The other object which is equally important is to punish the offender in a manner commensurate to the gravity of the offence for which he has been convicted.
5. In the case at hand a young life (about 27 years of age) was lost in a needless and callous manner. I say so because, whatever the deceased had said to offend the applicant in the bar, he was fleeing the scene and could not therefore, have been a threat to the applicant anymore. Infact, none of the witnesses testified that the deceased was armed nor that he struck out at the applicant at any time during the exchange. Yet the applicant and his cronies chased and caught up with him, and after the applicant felled him with a stone, they all descended on him with kicks and blows as he lay bleeding on the ground.
6. While it is commendable that, in his own opinion, the applicant is rehabilitated following the stint in prison, in the circumstances of this case however, it is necessary that he renders unto Caesar what belongs to Caesar, by completing the prison sentence, which in my view, cannot be said to have been in any way harsh or excessive.

For the foregoing reasons the application is denied.

SIGNED DATED and DELIVERED in open court this **11th** day of **October 2012**.

L. A. ACHODE

JUDGE