Mwangania v Republic (Miscellaneous Criminal Application E104 of 2023) [2024] KEHC 6298 (KLR) (30 May 2024) (Ruling)

Neutral citation: [2024] KEHC 6298 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MOMBASA

MISCELLANEOUS CRIMINAL APPLICATION E104 OF 2023

A. ONG'INJO, J

MAY 30, 2024

BETWEEN

PATRICK MURIUKI MWANGANIA ..... APPLICANT

AND

REPUBLIC ..... RESPONDENT

RULING

1. The applicant Patrick Muriuki Mwangania was charged and convicted for the offence of robbery with violence in Mombasa CMC Cr C No 2192 of 2010 then sentenced to life imprisonment. Hearing of the applicant's appeal in Mombasa HC Cr A No. 97 of 2014 did not proceed for about 8 years because the lower court file could not be traced.

2. The applicant withdrew the appeal in Mombasa HC. Cr A. No. 97 of 2014 to pursue the application herein for review of his sentence.

3. The applicant now seeks that this court factors the remand period in his sentence and considers his mitigation as follows: -

    a. That he was a first offender.

    b. That he was aged 34 years at the time he committed the offence and showed remorse ahead of his sentence by the trial court.

    c. That he has been in the prison facility for a period of over 12 years with considerably good reputation.

4. The Sentence Review Report by Lynet Murrey, Probation Officer, Kisauni filed on 7th November 2023 was to the effect that the applicant is physically healthy with flexible schedule whenever he will be expected to work, the sister has offered to support him financially, and land is available to him

for cultivation through his father. It is recommended that the court considers placing him on non-custodial sentence of 3 years probation under the supervision of Kiambu Probation Station.

5. In considered the Sentence Review Report, this court hereby sets aside the life imprisonment which has been declared unconstitutional in the Court of Appeal case of *Julius Kitsao Manyeso v Republic* [2020] eKLR where it was held that imposition of a mandatory indeterminate life sentence, is an unjustifiable discrimination, unfair and repugnant to the principle of equality before the law under Article 27 of the *Constitution*

6. To that end, life imprisonment is substituted with 30 years imprisonment to take effect from July 9, 2010 pursuant to Section 333(2) of the *Criminal Procedure Code*. The last 3 years of the sentence to be served under supervision of probation officer to ensure he does not relapse into crime.

DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS,THIS 30TH DAY OF MAY 2024

HON. LADY JUSTICE A. ONG'INJO

.....

JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

In the presence of: -

Etropia- Court Assistant

Mr. Ngiri for the Respondent

Applicant present in person