

**IN THE SUPERIOR COURT OF JUDICATURE**  
**IN THE COURT OF APPEAL – ACCRA**

**CORAM** - AKAMBA, JA {PRESIDING}

PIESARE, JA

BROWN, MRS, J

**CIVIL APPEAL**

**NO. H1/241/05**

**5<sup>TH</sup> MAY, 2006**

**ALI ABDUL KARIM**

**... APPELLANT**

**V E R S U S**

**1. THE DIRECTOR-GENERAL  
GHANA PRISONS**

**2. THE DIRECTOR  
NSAWAM PRISONS**

**3. THE ATTORNEY-GENERAL  
ATTORNEY-GENERAL'S DEPT.**

**... DEFENDANTS/RESPONDENTS**

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**J U D G M E N T**

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**IRISMAY BROWN, J** - This is an appeal against a ruling of the High Court. The Appellant between the months of July and August 1989 was convicted and received the following sentences:

7 years on the 26<sup>th</sup> of July for the possession fake Bank notes,  
25 years on the 8<sup>th</sup> of August for abetment of robbery and  
Death sentence on the 21<sup>st</sup> of August for robbery.

On the 26<sup>th</sup> of June 1997 the court of appeal dismissed his appeal against convictions but the against sentence was allowed and a sentence of life imprisonment was substituted for the sentence of death by firing squad.

On the 30<sup>th</sup> of June 2003, there was a Press Release {Exhibit 6} signed by Hon. Hackman Owusu Agyeman, to the effect that amnesty had been granted to certain categories of prisoners listed and described in the summary below.

- a. Two thousand (2,000) 1<sup>st</sup> offenders with less than one year or less to go were to be released outright.
- b. One hundred and seventy nine (179) prisoners on death row who have served at least 10 years are to have their sentences commuted to life imprisonment.
- c. Twenty three (23) prisoners who are on life sentences and have served at least 10 years are to have their sentences commuted to a definite term of 20 years IHL.
- d. Those seriously ill or of old age were to be released on compassionate grounds.

On the 2<sup>nd</sup> of July a Circular {Exhibit 1} was issued by the Director General of Prisons to all stations affected by the amnesty. Each station was to constitute a Discharge Board to consider the approved list of prisoners who were to be considered for discharge.

Paragraph 4 of the Circular stated that “under no circumstances should armed robbers and murderers be released.”

The Appellant who had been serving time at Nsawam Medium Security Prison, was listed as a beneficiary of the amnesty and his name was included among category “C” ie.

Prisoners who had been sentenced to life imprisonment and had served at least 10(Ten)years. After deliberations by the committee, they issued a report dated 29<sup>th</sup> July 2003 on the implementation of the Amnesty. Some categories of prisoners were to be

released or deported. Those to be detained had their Expected Date of Discharge (E.P.D.) indicated against their respective names.

Fourteen (14) prisoners falling within the same category as the Appellant were released. Remarks made against 8 others including the Appellant indicated that they were not to be released as they still had periods of sentences to serve. Notes made against the Appellant's name indicated he had been given a long E.P.D. because "he was serving life and a definite sentence." The committee had added up the total years of sentences imposed concluding that the Appellant had altogether 32 years to serve. Thus his E.P.D. was to be 21<sup>st</sup> of April 2024.

Appellant instituted an action against the respondents herein for

- a. An order for the immediate release from prison custody
- b. General Damages for unlawful incarceration
- and
- c. Costs.

He claimed that his original death sentence superseded all the other sentences and that this sentence had been commuted to life by the Court of appeal. He pleaded that he had benefited from the various amnesties granted in 1997, 2000 and 2003. Having served more than 15 years in prison and with the commutation of his death sentence to life, by the Court of Appeal, he claimed he was entitled to immediate release under the said general amnesty of 2003.

The Defence, respondents herein, acknowledged and the court agrees that by law, the death sentence indeed superseded all the other sentences imposed at the trial court. The consecutive computation by the Committee of the number of years left for the accused to serve clearly amounted to an error.

The defence also accepted that the death sentence had been commuted to life by the Court of Appeal. It however stated, and I quote.

"that by operation of regulation 65 of the Prison Regulations LN 412/58 only death sentences commuted to life imprisonment take effect from the date of sentence. All other sentences commuted take effect from the date of commutation."

It contended further that

“Since Plaintiff was sentenced to life imprisonment and the sentence was commuted to 20 years on the 1<sup>st</sup> July, 2003 the effective date for the 20 years is first July, 2003 and not 21<sup>st</sup> august 1989.”

Ruling on a motion for judgment the judge upheld the submissions of the State Attorney. Relying on Regulation 65 and order 452 of Orders of Prison Service, Chapter X set out below, he stated:

“If one is not having a death sentence hanging around his neck section 65 does not apply.....Plaintiff death sentence was commuted to life.....He was released from the condemned cells to begin a new sentence as a prisoner for life.....it is an indefinite jail term and he would have remained in prison until his death. Luck smiled on him..... his indefinite term has been commuted to a definite term of 20 years..... the new date can only be the date amnesty was granted since he was not serving a death sentence. Regulation 65 does not apply to him so his new prison term does not start from date of his sentence from court i.e. 21<sup>st</sup> August 1989.”

The judge further ruled that the appellant had barely served 2 years of his new 20 years sentence and therefore should not be released.

The power of commutation of Capital punishment is ordinarily the exclusive preserve of the President. I refer to Article 72 of the 1992 Constitution. However in this instant case, there is no disputing of the fact that this court at a proper forum did commute the death sentence imposed on the appellant to life imprisonment. So that to all intends and purposes as at 1<sup>st</sup> July 2003 when the General Amnesty was granted, the Appellant was serving a life sentence.

The terms of the amnesty, as set out in the press release {Exhibit6} *ibid*, gave no indication as to the operative date. That appeared later, according to records before the court, in a letter dated March 2004 {Exhibit 4} sent by the Acting Director-General of Prisons, it was addressed to the Regional Commander of Nsawam Prison. It referred to a previous discussion on the appellant’s discharge and directed that the commander was to revisit the computation of the Appellant’s EPD stated in appendix F (this Exhibit was attached to the report of the Committee referred to above). The Commander was directed

to compute a new EPD for the appellant using the effective date of the 1<sup>st</sup> of July 2003 Amnesty.”

Again there is no record before this court as to what ensued when this request was made. The absence of a full record before this court is obviously due to the fact that the suit did not proceed to a full trial. The ruling that was delivered was upon an unsuccessful application for judgment by counsel for the appellant at the trial court.

Regulation 65 states:

“When a capital sentence is commuted by a Governor General to life imprisonment or to imprisonment for a term of years, such sentences so commuted shall.....be deemed to be a sentence passed by a court and unless the Governor General directs shall be deemed to commence from the date of the original sentence by the court.”

It is quite obvious that section 65 does not apply to Appellant’s case. As stated above, he was serving a life sentence as at the time of the exercise.

Prisoners serving life sentences are covered by Regulation 66 which states as follows:

(1) In the case of a prisoner who is serving a sentence of imprisonment for life, or until Her Majesty’s Pleasure be known, no specific remission of sentence shall be assigned to such prisoner for the purpose of his release; but as soon as he shall have served 4, 8 and 12 years, 13 years and 4 months, 17 and 20 years his case shall be submitted, together with the recommendation thereon by the Director of Prisons, to the Governor-General for the intimation of the Governor-General’s pleasure. Records shall be kept by the Keeper of Prison relating to such a prisoner for the purpose of having on record his course of conduct and industry in prison, as if such prisoner were entitled to earn remission.

(2) Whenever the Governor-General considers the case of a prisoner under the provisions of sub-regulation (1) of this regulation, and does not remit the residue of the prisoner’s sentence, or, if such prisoner is a “convict” within the meaning of the Prevention of Crimes Ordinance (Cap. 38), does not order him to be released on licence, the Governor-General may direct at what later time or times the case shall again be submitted for his consideration.

The Appellant has stated on appeal that several other prisoners with life convictions like him had been released. It is obvious however from Section 66 above that as with the exercise of the prerogative of mercy under a general amnesty, the release or otherwise of a prisoner under a life sentence is entirely under the absolute discretion of the President upon consideration of recommendations by the prison authorities. The peculiar circumstances of each individual prisoner are taken into account. The regulation calls for the “conduct and industry of the prisoner” to be considered. So that the fact that other prisoners on the list have been released is not a factor that enures to the benefit of the appellant.

As with the exercise of all executive discretion, the court will only intervene when there is overwhelming evidence that the exercise of the discretion was not in conformity with the operative law. **REPUBLIC VRS. MINISTER OF INTERIOR EX PARTE BOMBELLI [1984-86] 1 GLR 204.**

There is no evidence before this court that that was the case and therefore the appeal fails and should be dismissed.

**MRS. IRISMAY BROWN**  
**JUSTICE OF THE HIGH COURT**

I agree,

**J.B. AKAMBA**  
**JUSTICE AOF APPEAL**

I also agree.

**E. K. PIESARE**  
**JUSTICE OF APPEAL**

**MRS. HELEN ZIWU WITH HER GIFTY SAKYIBEA (MS) AND NICHOLAS  
KWARTENG FOR RESPONDENTS.**

**MR. THOMAS HUGHES FOR THE PLAINTIFF/APPELLANT.**

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