



**Mahindu v Republic (Criminal Petition E005 of 2024)
[2024] KEHC 14935 (KLR) (28 November 2024) (Order)**

Neutral citation: [2024] KEHC 14935 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL PETITION E005 OF 2024
JK SERGON, J
NOVEMBER 28, 2024**

BETWEEN

VITALIS SHIKOLI MAHINDU APPLICANT

AND

REPUBLIC RESPONDENT

ORDER

1. The Petitioner was charged and convicted for the offence of robbery with violence contrary to section 296 (2) of the Penal Code vide Chief Magistrates Court Criminal Case No. 1595 of 2012 and sentenced to death. The Petitioner is serving a life sentence after the death sentence that was imposed by the trial court was commuted to life imprisonment vide a presidential decree.
2. The Petitioner appealed to the High Court *vide* High Court Criminal Appeal No. 47 of 2014 whereby the appeal was dismissed and the conviction and sentence affirmed.
3. The Petitioner filed this application for sentence review. The Petitioner stated that this court has jurisdiction to hear and determine the application under article 165 (3) (b) of the Constitution of Kenya, 2010. It is the Petitioner's contention that the discretion of the sentencing court was limited by the mandatory nature of sentencing under section 296 (2) of the Penal Code. The Petitioner therefore urged this Court to award him a lenient sentence under article 50 (2) (p) (q) of the Constitution of Kenya, 2010.
4. The Petitioner stated that he was remorseful for the offence and that he has reformed and that he is a law abiding citizen. The Petitioner stated during incarceration he underwent several rehabilitation programs.
5. The sentence review application came up for inter partes hearing and the Prosecution vehemently opposed the petition as the Petitioner had not furnished the Court with sufficient reasons as to why the petition should be allowed. The Petitioner reiterated that he was deserving of a lenient sentence.



6. In *Muruatetu & another v Republic; Katiba Institute & 4 others (Amicus Curiae)* (Petition 15 & 16 of 2015) [2021] KESC 31 (KLR) (6 July 2021) (Practice Directions) the Supreme Court set out guidelines on resentencing. The Supreme Court stated as follows;“ Having considered all the foregoing, to obviate further delay and avoid confusion, we now issue these guidelines to assist the courts below us *inter alia* as follows:
- i The decision of Muruatetu and these guidelines apply only in respect to sentences of murder under sections 203 and 204 of the Penal Code...”
7. Pursuant to the Supreme Court decision in *Francis Karioko Muruatetu (supra)*, this court lacks jurisdiction to entertain this petition for sentence review. The petition is hereby dismissed.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 28TH DAY OF NOVEMBER, 2024.

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J.K. SERGON

JUDGE

In the presence of:

Mr. Musyoki – Prosecutor

Mr. Langat – C/Assistant

Petitioner – Present in Person

