



**Ruguru & another v Republic (Miscellaneous Criminal Application
416 of 2018) [2023] KEHC 169 (KLR) (Crim) (24 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 169 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS CRIMINAL APPLICATION 416 OF 2018
JM BWONWONG'A, J
JANUARY 24, 2023**

BETWEEN

SAMUEL MBUGUA RUGURU 1ST APPLICANT

AGNES TERESIA JAMES AMATI 2ND APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for re-sentencing pursuant to the Supreme Court decision in Francis Karioko Muruatetu & Another vs Republic [2017] eKLR from the decision of Ombija J. in High Court Criminal Case No. 210 of 2003 on 6th August 2008)

RULING

- 1 The applicants were charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code* (Cap 63) Laws of Kenya.
- 2 The particulars of the offence were that on August 29, 2003, at Majengo 'A' Estate in Kajiado District within the Rift Valley Province the applicants murdered Mary Bogoma Amati.
- 3 The applicants were found guilty and were convicted.
- 4 They were sentenced to death.
- 5 Their appeal to the Court of Appeal was dismissed on February 7, 2014.
- 6 Their death sentence was later commuted to life imprisonment by the State President under section 133 of the 2010 Constitution of Kenya.



7 They have filed an application before this court seeking re-sentencing pursuant to the Supreme Court decision in *Francis Karioko Muruatetu & Another vs Republic [2017] e-KLR*

Issues for determination.

8 I have considered the application and the respondent's submissions. I find that the issues that arise for determination is as follows.:

1. Whether this court has jurisdiction to determine the application
2. Whether the application sought ought to be allowed.

Analysis and determination

Issue 1

9 It is trite law that the jurisdiction of courts in Kenya is always conferred by the *Constitution* or other written laws and that a court of law can only exercise jurisdiction as conferred by the *Constitution* or other written law. A court of law cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. The jurisdiction of the High Court includes unlimited original jurisdiction in criminal and civil matters; jurisdiction to enforce the bill of rights; appellate jurisdiction; interpretative jurisdiction; any other jurisdiction, original or appellate, conferred on it by legislation and supervisory jurisdiction.

10 The applicants herein invite this court to review the sentence of life imprisonment.

11 From the record, the applicant filed an appeal against their conviction in the Court of Appeal and the same was dismissed. The only time that this court can review a sentence imposed upon by a court, is when such a sentence is imposed by a subordinate court pursuant to the provisions of section 362 of the *Criminal Procedure Code* (Cap 75) Laws of Kenya.

12 In the instant application, the applicants seek a resentencing of a sentence that was heard and determined by the Court of Appeal. As such, this court cannot review a judgment of that court.

13 That being the case, this Court lacks jurisdiction to hear and determine the application for resentencing on a matter that has already been heard and determined by the Court of Appeal.

14 Additionally, the applicants have exhausted their judicial remedies.

15 I therefore find that it is moot or academic to consider the other issues raised by the applicants.

16 Litigation must come to an end.

17 The application for resentencing is incompetent and is hereby struck out.

Ruling signed, dated and delivered in open court at Nairobi this 24th day of **January 2023**.

J M BWONWONG'A

JUDGE

In the presence of-

Mr. Kinyua: Court Assistant

The 1st applicant



The 2nd applicant

Ms. Aradi holding brief for Mr. Eredi for the 1st applicant

Mr. Odindo for the applicant

Mr. Otieno for the respondent

