



**BMK v Republic (Criminal Revision E131 of 2022)
[2023] KEHC 217 (KLR) (24 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 217 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL REVISION E131 OF 2022
GMA DULU, J
JANUARY 24, 2023**

BETWEEN

BMK APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before me is an application for review of sentence filed on July 7, 2022 grounded on the pronouncements made by the Supreme Court on mandatory death sentences in the case of *Francis Karioko Muruatetu & another -vs- Republic* (2016) eKLR.
2. The applicant also alleges a violation of his constitutional rights to fair trial under article 50(2) of the *Constitution of Kenya 2010*.
3. The application was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by the applicant, as well as the submissions filed by the Director of Public Prosecutions. In addition to submissions, the applicant also filed documents or certificates showing skills which he acquired while in prison.
4. From the record herein, I note that the applicant was convicted by the trial court on two counts of incest, and sentenced to 15 years imprisonment on each of the two counts.
5. His appeal to the High Court – Makueni High Court Criminal Appeal No 102 of 2019 was determined on June 25, 2020, and the two convictions were upheld, while the sentences were reduced to 12 years imprisonment on each of the two counts, to run concurrently. The appellant has not appealed to the Court of Appeal, but instead, has come to this court asking for revision relating both to the conviction and sentence.



6. I will start with the appellant's claim that his constitutional rights to fair hearing under article 50(2) of the Constitution were violated by the trial court.
7. No such a claim of violation of constitutional rights was raised either in the trial court or in his appeal to the High Court. In any case, in my view, such alleged violation of constitutional rights can only be a substantive ground of appeal, and cannot be a subject for consideration by this court under its limited review jurisdiction in section 362 of the Criminal Procedure Code (cap 75).
8. Secondly, since an appeal has already been determined by this court, the only issue that can be considered by this court is with regard to sentence and only under the confines of *Muruatetu* case reasoning as directed by the Supreme Court. All other complaints arising from the proceedings herein can only be adjudicated upon on appeal to the Court of Appeal, as this court cannot sit on appeal or review to its own decision.
9. Coming now to sentence, there is no legal basis for review of sentence herein firstly because the *Muruatetu* case directions by the Supreme Court only relate to mandatory death sentence in murder cases, and not cases where the maximum sentence is life imprisonment, like the present case.
10. Secondly, the High Court on appeal herein specifically dealt with the issue of the sentence imposed by the trial court and reduced the 15 years imprisonment to 12 years imprisonment. This court thus lacks jurisdiction to review or revisit its own decision, thus I will not revisit the sentence.
11. For the above reasons, I find no merits in the application for revision, which I hereby dismiss.

DELIVERED, SIGNED & DATED THIS 24TH DAY OF JANUARY 2023, IN OPEN COURT AT MAKUENI.

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GEORGE DULU

JUDGE

