



**Ogama v Republic (Miscellaneous Criminal Application
37 of 2019) [2023] KEHC 1525 (KLR) (27 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1525 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS CRIMINAL APPLICATION 37 OF 2019
HK CHEMITEI, J
FEBRUARY 27, 2023**

BETWEEN

PATRICK NGESA OGAMA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was accused, charged and convicted of the offence of robbery with violence contrary to section 296 (2) of the *Penal Code*. On June 30, 1999 he was sentenced to death as the law then mandatorily required. Upon the applicant's application filed pursuant to the decision of the Supreme Court in the now famous case of *Francis Muruatetu*, the court on April 28, 2020 ordered for sentence re-hearing under the *Muruatetu* authority.
2. The applicant went ahead to file two miscellaneous applications which were running simultaneously before the high court, one from prison and the other from outside prison namely; criminal case No 144 of 2019 and 161 of 2020. The High Court ordered that the miscellaneous applications be heard and determined before Chief Magistrate Court at Nakuru. On September 1, 2020, Hon E.K Usui, the Chief Magistrate at Nakuru in criminal case No 144 of 2019 ordered that the applicant be re-sentenced to serve 40 years' imprisonment from the date of his initial sentence. Thereafter, on November 6, 2020 the Senior Resident Magistrate Hon Limo at Nakuru in criminal case number 161 of 2020 ordered that the applicant custodial sentence be commuted to the period already served and he was set at liberty from prison unless lawfully held.
3. The prison authorities by a letter dated September 12, 2022 sought the directions of the court in view of the two conflicting decisions by the lower court.
4. When the matter came up for directions the applicant faintly ignored and said that he did not know what was going on. He left it for the court to decide.



5. In view of the fact that there are two conflicting decisions by the trial court as stated above, the first will always take precedence over the second. It is presumed that Hon Limo by the time he made his findings was not in the picture of the decision by Hon Usui, the Chief Magistrate. This court highly doubts if the applicant was innocent of the on goings in the two applications.
6. Consequently, the decision by Hon Limo is hereby set aside. The decision of Hon Usui sentencing the applicant to forty years from the date of the that is May 18, 2004 is upheld.
7. The applicant if not satisfied with the same is hereby granted leave to file any appeal if need be.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAKURU THIS 27TH DAY OF FEBRUARY 2023.

H. K. CHEMITEI.

JUDGE

