



**Juma v Republic (Miscellaneous Criminal Application
37 of 2018) [2023] KEHC 2957 (KLR) (31 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2957 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS CRIMINAL APPLICATION 37 OF 2018**

**PJO OTIENO, J
MARCH 31, 2023**

BETWEEN

OSMAN JUMA ALIAS MOHAMMED NANDWA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Even though the Applicant in his submissions proceeds as if he has an application for resentencing, the Notice of Motion dated June 12, 2018 and initiating the proceedings here merely seeks to pursue remedies under article 23 (1) (3) a & c and article 51(2) of the *Constitution*.
2. The Court considers the application on the basis that it was presented by one acting in person and not by an Advocate and assets that his rights under article 50(2) (a) have been violated by the fact that he did lodge an appeal to the Court of Appeal in the year 2005 but the same has not been acknowledged. The Application bemoans the delay now aggregating fourteen (14) years to be inordinate and a violation of his right to pursue an appeal after conviction.
3. The application is opposed by the office of Director of Public Prosecution on the grounds of opposition dated March 6, 2023 contending that the Court has, upon delivery of the Judgment on appeal, become functus officio and is bereft of jurisdiction to entertain the matter of resentencing; that only the Court of Appeal can interrogate the outcome of an appeal to the High Court especially now that there is pending an application for extension of time pending before the Court of Appeal. It is added that the application does not lie because the directions by the Supreme Court dated July 6, 2021 does not grant to this Court the jurisdiction to pursue resentencing hearing as sought by the Applicant.
4. The Respondent having raised the question of jurisdiction, that must be dealt with before hand and in limine. It being not in contention that the Applicant was charged and convicted of the offence of robbery with violence, the guiding law is the directions of the Supreme Court dated July 6, 2021 to



the effect that any challenge to the constitutionality of statutory death penalties for offences including robbery with violence be properly filed and escalated through the appellate hierarchy of Courts and that the Muruatetu, jurisprudence does not directly apply to such case.

5. The Court in its words said:-

“ 15. To clear the confusion that exists with regard to the mandatory death sentence in offences other than murder, we direct in respect of other capital offences such as treason under section 40 (3), robbery with violence under section 296 (2), and attempted robbery with violence under section 297 (2) of the Penal Code, that a challenge on the constitutional validity of the mandatory death penalty in such cases should be properly filed, presented, and fully argued before the High Court and escalated to the Court of Appeal, if necessary, at which a similar outcome as that in this case may be reached. Muruatetu as it now stands cannot directly be applicable to those cases.”

6. It is therefore the finding of the Court that the Court lacks jurisdiction to entertain the matter and thus dismisses the application.

DATED, DELIVERED AND SIGNED AT KAKAMEGA THIS 31ST DAY OF MARCH 2023.

PATRICK J O OTIENO

JUDGE

In the presence of:

The Applicant in person from Prison

Ms. Chala for the Respondent

Court Assistant: Polycap

