



**Sandera v Republic (Miscellaneous Criminal Application  
E029 of 2022) [2023] KEHC 21913 (KLR) (10 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21913 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
MISCELLANEOUS CRIMINAL APPLICATION E029 OF 2022**

**GL NZIOKA, J  
AUGUST 10, 2023**

**BETWEEN**

**TOBIKO OLE SANDERA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. By an undated chamber summons application filed in court on May 17, 2022, the applicant is seeking re-sentencing in the criminal case number 717 of 1997 at the Chief Magistrate’s Court at Naivasha, where he was charged with the offence of robbery with violence contrary to section 296(2) of the *Penal Code*, cap 63 of the Laws of Kenya.
2. The application is supported by the applicant’s undated affidavit in which he avers that his appeal to the High Court was dismissed in its entirety *vide* High Court criminal appeal No 1038 of 1998, at Nairobi.
3. That this court has the jurisdiction under article 165 (3) of the *Constitution of Kenya, 2010* to hear this matter and under section 333(2) of the *Criminal Procedure Code*, (cap 75) of the Laws of Kenya.
4. The application was opposed *vide* submissions filed by the respondent which states; that the Supreme Court in *Francis Muruatetu* only pronounced the mandatory nature of death sentence as unconstitutional for the offence of robbery with violence, attempted robbery with violence and murder. That the effect of the decision was to give the trial court an opportunity to evaluate the circumstances of the case on a case to case basis in order to impose a suitable sentence. However, a court can still impose the death sentence where circumstances called for the same.
5. Further, that the decision in *Francis Karioko Muruatetu & another v Republic* [2017] eKLR did not mean all convicts already in custody were to be set free or were to be sentenced to a set number of years



or that it is mandatory for the court to review the sentence, as it can still confirm the death sentence already imposed.

6. In the present case, the applicant has six previous convictions allied to the nature of offence charged with. That, the in committing the offence the applicant and his accomplices entered peoples house by force, injured them, and robbed them of their items. That, the trial court considered the circumstances of the case and the applicant's mitigation in imposing the sentence.
7. I have considered the application in the light of the materials before the court and note from the record that, upon being dissatisfied with the decision of the trial court, the applicant appealed to the High Court as stated herein and Hon Justice D.A. Onyancha and Hon Justice B. P. Kubo delivered a judgment *vide* HCCRA No 1038, of 1998, and dismissed the applicant's appeal.
8. The applicant moved to the High Court seeking for re-sentencing on the basis of the decision in the case of *Francis Karioko Muruatetu & another v Republic* [2017] eKLR whereupon the Hon Justice R. Mwangi directed that the matter be referred to the Chief Magistrate for re-sentencing.
9. By an order dated September 9, 2021, the Chief Magistrate Hon K. Bidali, declined to consider the application for re-sentencing on the ground that the Supreme Court in *Muruatetu 2* clarified that the jurisprudence in *Muruatetu 1* was not applicable in convictions of robbery with violence and referred the matter back to the presiding judge for directions.
10. On September 16, 2021 Hon Justice R. Mwangi, concurred with the Chief Magistrate that in light of the Supreme Court directions in *Muruatetu 2* the subordinate courts lacked jurisdiction to conduct re-sentencing for robbery with violence. The Hon Judge vacated his orders of March 8, 2021 ordering for re-sentencing and dismissed the application for re-sentencing. The file was ordered closed
11. However, despite the aforesaid the applicant is seeking for re-sentencing again through this matter. It is clear that the applicant is abusing the due process of court by regurgitating matters already dealt to finality. This court is *functus officio*.
12. He should desist for that conduct. As a result of the aforesaid the application herein is struck out.
13. It is so ordered.

**Dated, delivered and signed on this 10<sup>th</sup> day of August 2023**

**GRACE L NZIOKA**

**JUDGE**

**In the presence of:**

Applicant present virtually

Mr Atika for the Respondent

Ms Ogutu: Court Assistant

