



REPUBLIC OF KENYA



**KENYA LAW**  
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**Masika v Republic (Criminal Petition E005 of 2023)  
[2023] KEHC 27073 (KLR) (15 December 2023) (Judgment)**

Neutral citation: [2023] KEHC 27073 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CRIMINAL PETITION E005 OF 2023**

**DK KEMEL, J**

**DECEMBER 15, 2023**

**BETWEEN**

**ELIAS MALOBA MASIKA ..... PETITIONER**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. The Petitioner herein Elias Maloba Masika filed the present petition on 24.8.23. seeking a re-sentencing in respect of Kimilili SPM Criminal Case No. 437 of 2013. His gravamen is that he was convicted and sentenced to serve twenty (20) years, imprisonment. He later lodged an appeal at Bungoma High Court being HCRA No. 46 of 2016 which was dismissed on 21.12.17. He has averred that pursuant to the Supreme Court decision in *Francis Karioko Muruatetu & Others -vs- Republic* (2017) and the decisions of Odunga J (as he then were) in Machakos Petition No. E017 of 2021 and that he is entitled to a sentence review. He further averred that he has since reformed while in prison and has acquired several certificates.
2. Miss Mwaniki learned counsel for the Respondent submitted that his court has since pronounced itself on the matter and I thus functus officio. She sought for the dismissal of the Petition.
3. I have given the consideration to the Petition and the submissions presented. It is not in dispute that the Petitioner's appeal was dismissed by this court on December 21, 2021. There is no evidence that the petitioner has lodged an appeal to the Court of Appeal . Be that as it may , it is my considered view that this court lacks jurisdiction to entertain the matter in view of the fact that a court of similar jurisdiction heard the Petitioner's appeal and dismissed it. The directions given on July 6, 2021 by the Supreme Court in the case of *Francis Karioko Muruatetu & Others -vs Republic* (2017) (eKLR) was that the said decisional law is not an authority to declare minimum sentences as unconstitutional. Its application was limited to murder cases falling within its scope. Therefore, the Petitioners case being one of defilement, the request for review of sentence on the basis of the Muruatetu case (supra) is



without merit. The Petitioner's appeal having been determined by this court ought to move to the Court of Appeal for redress as this court has become functus officio.

4. In view of the foregoing observations, it is my finding that the petition lacks merit. The same is dismissed.

**DATED AND DELIVERED AT BUNGOMA THIS 15<sup>TH</sup> DAY OF DECEMBER, 2023**

**D. KEMEI**

**JUDGE**

In the presence of:-

Elias Maloba Masika Petitioner

Mwaniki For Respondent

Kizito Court Assistant

