

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

HIGH COURT CRIMINAL APPLICATION NO. E320 OF 2020

GODFREY MAINA MUIRURI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. I have considered the application herein filed on 7th December, 2020. The applicant is seeking for re-sentencing, following his conviction and sentence vide; HCCRC No. 71 of 2010. He was sentenced to suffer death. He now relies on the decision in Muruatetu's case wherein the Supreme Court of Kenya declared the mandatory death sentence as unconstitutional. In that regard, the applicant is in order, in seeking for re-sentencing. However, as I went through the trial court record, I noted that, the applicant apparently filed an appeal being an appeal No. 69 of 2017. The appeal was heard and dismissed in its entirety on the 5th day of June, 2020, by Hon. Judges: Asike Makadia, F. Sichale and J. Mohammed(JJAS). The applicant having invoked the appellate jurisdiction of the Court of Appeal, and the Court of Appeal having rendered itself on the sentence, this court has become *functus officio* and has no jurisdiction to entertain the matter. The applicant's recourse lies to the Supreme Court. It is noteworthy that, when the Court of Appeal rendered its decision, it was aware of Muruatetu's decision and nothing was easier than it addressing itself on the same. In that regard, I find no good reason to order for the hearing of this matter inter-parties as the issues herein, are pure issues of law, on jurisdiction.

2. In conclusion I find that, the subject application herein has no merit, and I accordingly dismiss it and/or decline to entertain it due to lack of jurisdiction.

DATED, DELIVERED VIRTUALLY AND SIGNED ON THIS 25TH DAY OF JANUARY 2022.

GRACE L. NZIOKA

JUDGE

25TH JANUARY 2022

In the presence of:

Applicant in person

Ms Chege for the Respondent

Edwin Ombuna – Court Assistant