



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

MISC. CRIMINAL APP. NO. 6 OF 2021

JOSEPH EKIRU ALIAS MAJI LOKIPI....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, **Joseph Ekiru alias Maji Lokipi**, has exhausted his appeals. The Court of Appeal on **25<sup>th</sup> June, 2015** dismissed his appeal. The applicant has now made the present application seeking to have the period of one (1) year and two months that he was in remand custody prior to his conviction taken into account. The trial court's file was not available to this court. The information that this court relies on is from the two judgments availed to the court i.e. the judgment the High Court and that of the Court of Appeal. Mr. Omooria for the State was not convinced that the Applicant had place evidence before the court that he was in remand custody for the said period before he was convicted.

A fundamental issue that come to the fore is whether this court, can revise the sentence of the Applicant in the circumstances where the Court of Appeal has already dealt with the case and rendered its final decision. It was apparent to this court that the Applicant was under the impression that since the Supreme Court's decision of **Francis Kairoko Muruatetu -vs- Republic [2017] eKLR** allowed the challenge of sentences on the basis of their unconstitutionality, then this court has the requisite jurisdiction to revise a sentence that was affirmed by the Court of Appeal.

This court is however of a contrary view. Once the Court of Appeal rendered its decision, this court (High Court) lacks jurisdiction to reopen the sentence in such a case. The **Muruatetu** decision does not give this court a *carte blanche* to relook every sentence that has been considered and finally determined by the Court of Appeal.

In the premises therefore, this application lacks merit and is hereby dismissed.

It is so ordered.

**DATED AT KITALE THIS 25<sup>TH</sup> DAY OF JANUARY, 2022**

**L. KIMARU**

**JUDGE**