



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**CRIMINAL PETITION NO. E 006 OF 2020**

**MOSES MURIUNGI MURITHI .....APPLICANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**JUDGMENT**

1. In his request for re-sentencing presented by the chambers summons, undated but filed on 9/11/2020 the applicant pleads for an order that he be accorded a reduced sentence in line with the decision by the Supreme Court in *FRANCIS KARIOKO MURUATETU & ANOTHER VS REPUBLIC*. (delivered on 14/12/2017)
2. I note that by the time the application was filed, the directions by the supreme court dated 6/7/2021 had not been issued. This application was therefore advised by the decision dated 14/12/2017 which I consider to have been clarified by the latter.
3. I consider the clarification in the directions to be aptly captured at paragraph 14 & 15 in the following words:-

**“ It should be apparent from the foregoing that Muruatetu cannot be the authority for stating that all provisions of the law prescribing *mandatory* or *minimum* sentences are inconsistent with the Constitution. It bears restating that it was a decision involving the two Petitioners who approached the Court for specific reliefs. The ultimate determination was confined to the issues presented by the Petitioners, and as framed by the Court.**

**[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.”**

4. The applicant here was charged with the offence of robbery with violence. The prescribed sentence for that offence is yet to be decreed unconstitutional. It remains good law even though the trial court retains the discretion while meting out a sentence. That discretion, however, remain upon the court imposing the sentence but not this court sitting as a constitutional court implementing the jurisprudence in the substantial judgment in the Muruatetu’s case.
5. In short the applicant has not brought himself within the parameters of seeking re-sentencing and therefore his application is hereby dismissed.

**DATED, SIGNED AND DELIVERED AT MERU THIS 28TH DAY OF FEBRUARY, 2022.**

**PATRICK J.O OTIENO**

**JUDGE**