

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COURT OF APPEAL NO. 51 OF 2016 AT NAIROBI

HIGH COURT CR CASE NO. 71 OF 2016 AT NAIROBI

MISC. APPLICATION NO. 237 OF 2018

JONATHAN LEMISO OLE KINI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. By a chamber summons application dated; 8th June 2018, the Applicant is seeking for orders that; the Court reviews the sentence meted upon him of 30 years, as it is rather too harsh and excessive.
2. The application is supported by the affidavit sworn by the applicant, in which he avers that, he was charged with the offence of; murder in; High Court Criminal Case No. 71 of 2013, and sentenced to death. He appealed against the conviction and sentence vide; Court of Appeal CR 51 of 2016. The decision in the matter was delivered on; 11th May, 2018 whereupon the death sentence was set aside and substituted with a jail sentence of 30 years, with effect from; 13th May 2015, when the initial sentence was passed.
3. It is this decision that, the appellant seeks to be reviewed pursuant to the decision in; *Francis Kariuki Muruatetu and Another vs Republic Petition 15 of 2015*. The Applicant further relies on article 165(3)(a)(b) to argue that, the High Court has unlimited jurisdiction in Criminal and Civil Matters. Further, pursuant to Section 333(2) of the Criminal Procedure Code, the court should consider the period he spent in custody. He avers that, the application is solid based on mitigation basis and prayers for extension of leniency on humanitarian grounds.
4. The Respondent opposed the Application on the ground that, the decision of the Court of Appeal was delivered after the decision in Muratetu case, and therefore, the Applicant has already benefited from it. As such, the Court lacks jurisdiction to entertain the application, therefore, the application should be dismissed.
5. I have considered the application, in the light of the material before the Court, and I find that, first and foremost, this Court is *functus officio* in the sense that, when it delivered its decision, and the matter moved to the Court of Appeal, it lost the jurisdiction to entertain the matter again. In the same vein, once a matter has been dealt with by the Court of Appeal, and final orders given, the High Court cannot deal with it on revision or appeal basis, due to lack of jurisdiction. Even if the Court were to look into the matter on merit, it cannot entertain a matter in light of Muruatetu Decision where the decision has already been considered by the Court of Appeal. Furthermore, the Court cannot invoke its jurisdiction under; Article 165(3) (a) & (b) as it has no original jurisdiction of a matter that has been entertained by the Court of Appeal.
6. Finally, as regards the provisions of section 333(2) I note that, the Court of Appeal was clear that, the sentence would run from; 13th May 2015, when the initial sentence was passed. Therefore, the said provisions have been taken into account. In the given circumstances, the Application has no merit and I dismiss it. Those then are the orders of the Court.

DATED, DELIVERED VIRTUALLY AND SIGNED AT NAIROBI ON THIS 31ST DAY OF MARCH 2021.

GRACE L. NZIOKA

JUDGE

IN THE PRESENCE OF;

EDWIN OMBUNA- COURT ASSISTANT

APPLICANT IN PERSON

MS KIBATHI FOR THE RESPONDENT