



Musila v Republic (Petition E003 of 2021) [2022] KEHC 3038 (KLR) (28 June 2022) (Ruling)

Neutral citation: [2022] KEHC 3038 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI**

PETITION E003 OF 2021

GMA DULU, J

JUNE 28, 2022

BETWEEN

STEPHEN MUSEMBI MUSILA PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. In this matter, Stephen Musembi Masila has come to this court through a petition dated 9/3/2021 asking that his 10 years prison sentence be reviewed.
2. The petitioner has relied on the case of *Francis Karioko Muruatetu -vs- A/G* (2015) eKLR, a decision of the Supreme Court, as well as Section 333(2) of the Criminal Procedure Code (Cap. 75). He asks that the period he was in custody during trial be taken into account in computing this sentence.
3. In response, the Assistant Director of Public Prosecutions stated that the issue of sentence was duly addressed by the High Court when the petitioner appealed.
4. I have considered the matter. I note that the petitioner appealed to this court in Makueni HCCR Appeal No. 63 of 2018 and judgment was delivered on 3rd May, 2019.
5. I note that the Judge, on appeal stated with regard to the sentence as follows;

“29 the appellant vide above provisions was awarded the minimum sentence provided by law.
This court has no mandate to reduce the minimum sentence set out in the statutes.”
6. It is of note that the petitioner was sentenced by the trial to pay a fine of 5 million or serve 10 years imprisonment for count 1 of stealing under Section 64(4) of the *Energy Act*, and to 1 year imprisonment for conveying public stores contrary to Section 324(2) as read with section 36 of the *Penal Code*.



7. I have start by saying that in July, 2021 the Supreme Court clarified that its decision in the Muruatetu case above, and stated that it applied to mandatory death sentences in murder cases, only and it did not affect any other mandatory or minimum sentences. Thus the applicant not having been sentenced to mandatory death sentence in a murder case, the *Muruatetu* case does not apply to him.
8. With regard to the application of Section 333(2) of the *Criminal Procedure Code* to the sentence as, the learned Judge of the High court herein on appeal considered the issue of sentence and determined the same as above, myself being a Judge of equal status; I have no jurisdiction to review that decision. If the petitioner is not satisfied with the learned Judge's reasoning on sentence, the proper thing to do is to go to the Court of Appeal and not to comeback to this court for review of the sentence.
9. In view of the above reasons, I find no merits in the petition. Same is hereby dismissed.

DELIVERED, SIGNED & DATED THIS 28TH DAY OF JUNE, 2022, IN OPEN COURT AT MAKUENI.

.....

GEORGE DULU

JUDGE

