

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

PETITION NO. 68 OF 2020

FABIANO UTUKU MUKIRA.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant herein filed the petition dated 12th August, 2020. In addition, he filed the notice of motion dated the same date. The court notes that both the petition and the motion seeks similar orders and therefore, I will consider them together.
2. He has urged the court to hear and determine the application for rehearing of the sentence imposed on him on the ground that the mandatory death sentence imposed on him is cruel and inhumane and thus, he was denied his rights under Article 50(4) of the Constitution. The other ground is that the decision by the trial court and subsequently the Court of Appeal were unconstitutional.
3. The applicant herein was arrested and charged with the offence of murder contrary to Section 203 as read with 204 of the Penal Code in Criminal Case No. 23 of 2003 and he was convicted and sentenced to death. He appealed to the Court of Appeal in Criminal Case No. 139 of 2010 at Nyeri and the appeal was dismissed but the death sentence was commuted to life sentence as per the presidential decree.
4. The petitioner, relying on the Supreme Court Case of **Francis Karioko Muruatetu & Another Vs Republic** argued that the mandatory nature of sentence has been declared unconstitutional and hence he seeks for an appropriate sentence.
5. When the application came up for hearing, the petitioner prayed for leniency and stated that he is remorseful. He prayed that he be given a non-custodial sentence so that he could go home and take care of his children.
6. In her response, counsel for the respondent submitted that the court had already made a pronouncement in Petition No. 8 of 2020 as such the applications herein are *res judicata*.
7. The court has considered the applications and the submissions by the petitioner and by the counsel for the respondent. I have also perused the court record and I have noted that as rightly submitted by counsel for the respondent, the petitioner herein filed a petition seeking for orders of resentencing pursuant to the decision of **Muruatetu** and the same was heard and struck out by the High Court at Embu in Petition No. 8 of 2020.
8. In the circumstances, the application herein has no merit and the same is hereby dismissed.
9. It is so ordered.

Delivered, dated and signed at Embu this 27th day of January, 2021.

L. NJUGUNA

JUDGE

.....**for the Petitioner**

.....**for the Respondent**