

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

MISC. CR. APPLICATION NO. 34 OF 2019

DAVID MARITA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Muruatetu: Scope of re-sentencing

[1] The applicant has applied for re-sentencing on the basis of Muruatetu decision. He seeks reduction of the life sentence imposed on appeal by this court (Bwonwong’ a J.) on 14th July 2016 under section 8(2) of the Sexual Offences Act. In his comprehensive submissions, he complained that the judge set aside the original sentence of 15 years and sentenced him to the minimum sentence of life imprisonment prescribed in section 8(2) of the Sexual Offences Act. According to him, the judge was constrained by the mandatory minimum sentence prescribed in section 8(2) of the Sexual Offences Act. Such provision is unconstitutional for it denies the court discretion to impose appropriate sentence. He beseeched the court to reduce the sentences accordingly.

[2] The prosecution opposed the application and argued that the applicant cannot come back to the High Court for resentencing as his appeal was heard and finalized. They urged that he can only seek such remedy from the Court of Appeal. They sought dismissal of the application.

ANALYSIS AND DETERMINATION

[3] Muruatetu decision falls in the lips of and is being widely used by many convicted persons who feel their sentences are excessive. But, questions abound; whether on the basis of the Muruatetu decision, the applicant can come back to this court for re-sentencing or he should approach the Court of Appeal on an appeal on sentence?

[4] In answering these questions, Ngugi J. in the case of JOHN KAGUNDA KARIUKI vs. REPUBLIC [2019] eKLR stated that: -

“...only prisoners who had been sentenced to death pursuant to mandatory provisions of the law are entitled to new sentence hearing. For all others, they are entitled to urge the decisional law in their appeal in a bid to get lower sentences and no more. They cannot bring new applications for re-sentencing”.

[5] Perhaps, it makes sense to address the procedural application of the Muruatetu decision. In my view, it is procedurally sound in a case such as this- where appeal has been decided by this court on sentence- for the applicant to make argument on sentence on the basis of Muruatetu decision in an appeal to the Court of Appeal, rather than in an application for re-sentencing in this court. I could be wrong. But, I declare not foreclosure on the debate, for I have not such authority.

[6] Nevertheless, being of that opinion, it is clear the direction the court is taking. Accordingly, as the applicant’s appeal was heard and determined in this court, he can only make argument for reduced sentence on the basis of Muruatetu principle in the Court of Appeal. Accordingly, I dismiss the application for re-sentencing.

Dated, signed and delivered at Narok through Microsoft Teams Application this 26th day of January 2021

F. GIKONYO

JUDGE