

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL REVISION NO. 4 OF 2019

JONATHAN LEMISO OLE KINIACCUSED

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONSREPUBLIC

RULING

The applicant *JONATHAN LEMISO OLE KINI*, has applied to this court by an application filed herein on 9.7.2019, seeking review of his sentence. Attached to the application is his affidavit in which he deposes that he had been charged with murder contrary to section 203 as read with 204 of the Penal Code in Nairobi Criminal Case Number 71/2013. He was convicted and sentenced to death. However, the Court of Appeal in Criminal Appeal No. 51 of 2016 reduced his sentence to 30 years imprisonment. This is the sentence that the applicant seeks this court to review i.e so that his sentence do run from the date of his arrest on 25.6.2013, and not the date of conviction on 13.5.2015.

The learned counsel for the state, Ms. Kibathi, opposed this application on grounds that the High Court lacks jurisdiction to overturn the order of the Court of Appeal. That the Court of Appeal considered all principles of sentencing and the Jurisprudence in the *Muruatetu* case and stated that the sentence was to start from the date when he initial judgment was delivered on 13.5.2015. Counsel urged that this application be dismissed.

I have considered the application, affidavit in support of the same, authorities cited and the response from the Respondent side. The attention of this court has been drawn to the fact that upon his conviction and sentence to death by this court (Hon Justice R. Korir), the applicant filed an appeal to the Court of Appeal. Upon consideration of his appeal, the Court of Appeal dismissed the appeal of the applicant. At paragraph 34 of the Judgment of the Court of Appeal, the court considered the sentencing guidelines issued by the Supreme Court in *Francis Karioko Muruatetu and Another Versus Republic (2017)eKLR*. In their Judgment, the Court of Appeal noted at paragraph 36 of their Judgment, that;

“In view of the foregoing and considering the gravity of the offence that was committed by the appellant, we hereby set aside the death sentence that was pronounced against the appellant by the trial court and substitute therefore a jail term of thirty (30) years from 13.5.2015 when the initial sentence was passed.

It is therefore clear that the issues raised in this present application had been determined by the Court of Appeal in the applicant’s own appeal, *CA Criminal Appeal No. 51/2016, Jonathan Lemiso Ole Kini Versus Republic*. This court is bound by the determination of the Court of Appeal. For lack of Jurisdiction, I accordingly dismiss this application of the applicant filed herein on 9.7.2019. Orders accordingly.

D. O. OGEMBO

JUDGE

23.3.2021.

Court:

Ruling read out in open court (online) in the presence of the applicant and Mr. Mutuma for state.

D. O. OGEMBO

JUDGE

23.3.2021.