

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

PETITION NO. 69 OF 2019

DORIS KAWIRA ZAKAYO.....PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

JUDGMENT ON RESENTENCING

1. The Petitioner herein **Doris Kawira Zakayo** has filed this petition requesting this court to consider resentencing her pursuant to the decision of the Supreme Court in **Francis Karioko Muruatetu & Another v Republic [2017] eKLR**.
2. The Petitioner had been charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code in **Mombasa HCRCC 58 2012**. However, the learned trial judge found the Petitioner guilty of the offence of Manslaughter, convicted her, and sentenced her to serve 12 years in prison.
3. This petition seeks re-sentencing on the basis of the Supreme Court decision in **Muruatetu case No. 15 &16 of 2015**.

Analysis and Determination

3. The Muruatetu case established the principle that any law that takes away or limits court's discretion in sentencing is unconstitutional. With that decision courts, now exercise discretion where the law has provided for a mandatory or minimum sentence. However, I note that in **Mombasa HCRCC 58 2012**, the petitioner was sentenced to 12 years imprisonment and she has been in prison for close to 8 years and 8 months. It is noteworthy that by sentencing the petitioner to 12 years imprisonment for manslaughter, the judge exercised discretion. In such case, the petitioner may only appeal to the Court of Appeal if she feels aggrieved by the sentence. She should not come back to this court on the pretext of Muruatetu decision.
4. In the upshot, I dismiss the petition herein for re-sentencing.

It is so ordered.

That is the Judgment of the court.

Dated, Signed and Delivered at Mombasa this 29th day of July, 2021.

E. K. O. OGOLA

JUDGE

Judgment delivered via MS Teams in the presence of:

Petitioner in person

Ms. Wanjohi for DPP

Ms. Peris Court Assistant