



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL REVISION CASE 69 OF 2017**

**DELAMERE LEMESHENE.....APPLICANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**RULING**

This matter comes up before this court for the application of the applicant, **DELEMERE LEMESHANE** (undated) filed in court on 25.8.2019. The same seeks orders that the applicant be resented to conform with the guidelines issued by the Supreme Court in Petition No. 5/2015, Francis Karioko Muruatetu and Another Versus Republic. In support of the application is an affidavit of the applicant that he had been sentenced to death for an offence of Robbery with violence in Naivasha Chief Magistrate's court Criminal Case No. 717(B)/1997. That he appealed before the High Court, in Nairobi HCCR Appeal No. 1038/1998. In a Judgment delivered on 5.4.2004, his appeal was dismissed and the death sentence confirmed. This is the sentence he seeks to have reviewed. He otherwise noted, in his oral submissions that his appeal to the Court of Appeal is still pending unheard.

In the short response to this application, Mr. Mutuma, for the Republic, submitted that since the applicant filed an appeal which was dismissed, he ought to serve his sentence. Also that the applicant has not shown any remorse and so does not deserve a re-sentencing.

There is no doubt that the appeal of the applicant was dismissed by the High Court, this court, way back on 5.4.2004. This was long before the decision of the Supreme Court in the Muruatetu case above. His appeal to the Court of Appeal has also not been determined.

Whereas the applicant seeks resentencing herein on the basis of the 1<sup>st</sup> decision of the Muruatetu case, the Supreme Court, making a further ruling in the same Muruatetu case (Petition No. 15 of 2015) on 6.7.2021 held at Paragraph 15 of the said ruling that;

**“To clear the confusion that exists with regard to the mandatory death sentence in offences other than murder, we direct in respect of other capital offences such as treason under section 40(3) robbery with violence under section 296(2) and attempted robbery with violence under section 297(2) of the Penal Code, that a challenge on the constitutional validity of the mandatory death penalty in such cases should be properly filed, presented and fully argued before the High Court and escalated to the Court of Appeal, it necessary at which a similar outcome as that in this case, may be reached. Muruatetu as it now stands cannot directly be applicable to those cases.”**

With the above decision of the Supreme Court, this application based on the first Muruatetu decision, (Muruatetu I), must fail, this being a case of robbery with violence contrary to section 296(2) of the Penal Code.

Secondly, the application of the applicant seeks that this court revises the findings of the Hon. Justice D. A. Onyancha dismissing the appeal of the applicant and confirming the sentence of the Lower court on 5.4.2004 (HCCR 1038/98). The issue is whether this court has the jurisdiction to revise any decision of a court of concurrent jurisdiction. Neither the constitution, nor any legislation confers any such powers on this court. For lack of jurisdiction, this court declines to issue the orders prayed for by the Applicant for revision.

The sum total is that the application of the applicant filed herein on 25.8.2019 lacks any merit and is dismissed. Ordered accordingly.

**D. O. OGEMBO**

**JUDGE**

**29.9.2021.**

**Court:**

Ruling read out in open court (on-line) in the presence the applicant and Mr. Chebii for the state.

**D. O. OGEMBO**

**JUDGE**

**29.9.2021.**