

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HCCR REV. NO. E016 OF 2020

PETER MUTUKU MUNGATU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. Before me is an application for review of sentence brought by way of Chamber Summons filed on 2nd December 2020, seeking that this court considers the provisions of section 333(2) of the Criminal Procedure Code (cap. 75) and take into account the period the applicant was in custody during trial from 23rd October 2016 to 3rd January 2018, in determining the sentence. The application is grounded on the reasoning in the Supreme Court reasoning in **Petition No. 15 of 2015 – Francis Muruatetu –vs- Republic**. The applicant has also asked this court to take into account the mitigating factors in determining the appropriate sentence applicable to him herein.

2. The application has been opposed through a replying affidavit sworn on 15th June 2021 by Ann Penny Gakumu, the Senior Principal Prosecuting Counsel. The main thrust of the opposition to the application is that the decision in Muruatetu case did not outlaw mandatory sentences, but merely allowed trial courts discretion to impose less severe sentences. It was also deposed that the trial court herein took into account all relevant factors before sentencing the applicant.

3. No written submissions were filed to this application, and both the applicant and the Director of Public Prosecutions merely urged this court to deliver its ruling to the application.

4. I have perused the trial court proceedings as well as the judgment therein. I have also perused the grounds Makueni High Court Criminal Appeal No. 47 of 2018, in the applicant’s appeal against conviction and sentence, was dismissed on 19/2/2019 by Justice C. Kariuki.

5. This being a matter where an appeal of the applicant against conviction and sentence has already been dismissed by the High Court, in my view, appellant should have proceeded to the Court of Appeal.

6. Coming to the issue of review of sentence, the appellant was arrested on 4th October 2016 and sentenced on 22nd January 2018 which was more than one year. During sentencing the Prosecutor said that the appellant was a first offender, and on his part, the appellant said in mitigation that he had been involved in an accident and asked for forgiveness, and the trial court stated as follows –

“This offence carries a mandatory sentence. I do, therefore, sentence him to serve 10 years in prison. Right of appeal within 14 days”.

7. The trial court had power and discretion to sentence the applicant to that sentence having taken into account all relevant factors. In the present case, since the matter has already been determined by the High Court with regard to **both conviction and sentence**, this court cannot purport to review the sentence, merely on the basis that the trial court did not take into account the provisions of section 333(2) of the Criminal Procedure Code.

8. In my view, the only option available to the applicant is to file an appeal to the Court of Appeal. I dismiss the application for review of sentence herein.

DELIVERED, SIGNED & DATED THIS 23RD DAY OF SEPTEMBER 2021, IN OPEN COURT AT MAKUENI.

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GEORGE DULU

JUDGE