

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

MISCELLANEOUS CRIMINAL APPLICATION NO 4 OF 2019

WESLEY CHIRCHIR MULWA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

1. The applicant (**WESLEY CHIRCHIR MULWA**) was arrested on 10/11/2006 and charged with the offences of murder contrary to section 202 as read with section 203 of the Penal Code. He also faced a charge of robbery with violence contrary to section 296 (2) of the Penal Code. Upon trial, he was convicted on both counts and sentenced to death on the charge of robbery with violence. He immediately lodged an appeal in **ELD HCCRA NO 109 OF 2007**, and succeeded on the conviction and sentence of robbery with violence. For the offence of murder, he was sentenced on 27th June 2018 and sentenced to serve life imprisonment. He claims to have filed an appeal whose details he has not given, saying there has been no communication from the court.

2. The appellant's application is premised on the Supreme Court's decision in the **Francis Karioko Muruatetu & Another v Republic [2017] eKLR**, where the Supreme Court pointed out that the mandatory death penalty for murder was unconstitutional in so far as it interfered with the judicial officer's discretion.

3. He explains that he is now a reformed Christian who is remorseful for his misdeeds, and is rehabilitated. He explains that at the time of committing the offence he was 32 years and was easily influenced. He also claims to have ulcers and kidney ailments. Now that he is reformed, he asks to be allowed to go back to his community and teach them on the dangers of crime. The applicant's prayer is that the court reviews his sentence and impose an appropriate one taking into account the period he spent in remand custody.

4. The application is opposed by Miss Okok on behalf of the DPP, and she points out that the sentence is a lawful one, and the applicant should pursue his appeal

5. The *ratio decidendi* in the Muruatetu case was the constitutionality of mandatory nature *visa vis* the independence of the court. In this instance the applicant was convicted on a charge of murder, which in the statutes carries a mandatory death sentence. He was however NOT sentenced to death, but to life imprisonment –hence a departure from the mandatory character of the sentences envisaged by the **Muruatetu** case.

This matter does not find a footing on the aforementioned judicial pronouncement, and I concur with Miss Okok that the sentence is legal, and if the applicant wishes to challenge that sentence, then the avenue is through filing an appeal. The application lacks merit and is dismissed

Delivered virtually this 29th day of October 2020 at Eldoret

H. A. OMONDI

JUDGE

Miss Okok for DPP

Komen - C/A