

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

Coram: D. K. Kemei - J

MISC. CRIMINAL APPL. NO. 56 OF 2020

GEOFFREY MUTETI MUSYOKA.....APPLICANT

-VERSUS-

REPUBLIC.....PROSECUTOR

RULING

1. The applicant **GEOFFREY MUTETI MUSYOKA** brought a chamber summons filed on 5.6.2020 seeking for review of the life sentence that was meted on him. The application is based on grounds in his supporting affidavit that he was convicted of robbery with violence by the trial court, he appealed to this court and the appeal was dismissed. He added that the death sentence is unconstitutional. On record is a notice of appeal to the Court of Appeal and there is no direction to the effect that the same had been withdrawn.

2. I have considered the application. The issues for determination are Firstly, whether the court has jurisdiction to review a conviction and Secondly, whether the applicant is entitled to resentencing. **Article 50 (2) (p) and (q)** of the Constitution states that the accused person has a right:

(p) to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and

(q) if convicted, to appeal to, or apply for review by, a higher court as prescribed by law.”

3. The right to resentencing under the above provisions is a principle of fair trial and also is subject to the law and more specifically the supreme law of the land.

4. Under the mandatory terms couched in the above provisions, right to resentencing that is allowed under Article 50(p) is permitted if the prescribed punishment had changed before sentencing. From the available record the applicant has already indicated intention to appeal to the Court of Appeal. This court has no jurisdiction to entertain the application. The jurisdiction to do so is vested with the Court of Appeal where his appeal is pending determination. The applicant is now directed to proceed and approach the Court of Appeal for redress.

5. In this regard I find that the application filed on 5.6.2020 is improperly before the court. The same lacks merit and is dismissed.

It is so ordered.

Dated and delivered at Machakos this 24th day of November, 2020.

D. K. Kemei

Judge