



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

PETITION NO. 29 OF 2019

YUSUF ALI WASIKE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

IN THE MATTER OF RE HEARING OF SENTENCE UNDER ARTICLE 19(3),22,23,25,26,27(1), 28,29,50(2)(Q),160, 159(1),160, 165(3)(B) OF THE CONSTITUTION OF KENYA, 2010 AND SECTION 261 OF THE CRIMINAL PROCEDURE CODE CAP 75 LAWS OF KENYA

AND

IN THE MATTER OF ARTICLES 21(1), 25(C), 259(A), (B) AND (D), 1(1)(3), 2(4), 258(1) OF THE CONSTITUTION OF KENYA, 2010,

AND

IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL RIGHTS UNDER CHAPTER 4 OF THE CONSTITUTION OF KENYA, 2010.

RULING

According to the Notice of Motion dated 12th November 2019, and the Supporting Affidavit sworn on the same date, the petitioner Yusuf Ali Wasike was charged in **Eldoret Chief Magistrate’s Criminal Case Number 4090 of 2008** with the offence of **Robbery with Violence c/s 296(2) of the Penal Code**.

On 15th May 2009, having been found guilty of the offence he was convicted and sentenced to death. He filed **High Court Criminal Appeal Number 84 of 2009**, but the same was dismissed. The death sentence was later commuted to life imprisonment by the President of the Republic.

Following the Supreme Court decision in **Francis Karioko Muruatetu and Another [2017] eKLR**, on the unconstitutionality of the mandatory nature of the death sentence, he has brought this application for sentence rehearing.

The applicant also invokes **Article 165 (3) (b) of the Constitution of Kenya** on the jurisdiction of this court to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened. Nevertheless, regarding the issue he seeks to be determined, the Supreme Court, in the same case on which he places reliance, has already given directions.

However, in the words of the Supreme Court in that case at **paragraph 111**, it was stated:

“It is prudent for the same Court that heard this matter to consider and evaluate mitigating submissions and evaluate the appropriate sentence befitting the offence committed by the petitioners.”

On that premise, my view is that the applicant’s first point of call is the Chief Magistrate’s Court, which is the court that heard the matter and sentenced him in the first place.

I direct therefore that this matter be placed before the Chief Magistrate Eldoret within 14 days hereof for the appropriate action.

Dated and delivered virtually this 30th day of December, 2020.

Mumbua T. Matheka

Judge

In the presence of:

Court Assistant Martin

Petitioner Present

Court Prosecutor Ms Limo