

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAROK

MISC CRIMINAL APPL ON 16 OF 2020

LEMASON TENGETI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

RE-SENTENCING

1. This petition seeks re-sentencing on the basis of the Supreme Court decision in the now famous Muruatetu case No 15 &16 of 2015. On 16/12/2016, Meoli J reduced the Petitioner's original sentence of life imprisonment to a jail term of 16 years. Now, the Petitioner seeks for further re-sentencing on the basis of his mitigation and circumstances of the case. He stated that he is 70 years old and prison life and conditions are not suitable for his age. He also based his application under article 163 (1) and (7) of the constitution.

2. The learned state counsel, Ms. Sharon Koina opposed the application. She argued that the High Court had already dealt with this matter and reduced the sentence. Therefore, his petition is an abuse of court process. She was of the view that the petitioner should file an appeal to the Court of Appeal if he is aggrieved by the sentence imposed by the High Court.

ANALYSIS AND DETERMINATION

3. The Muruatetu case established the principle that any law that takes away or limits court's discretion in sentencing is unconstitutional. With that decision courts now exercise discretion where the law has provided for a mandatory or minimum sentence. However, I note that, in Naivasha Criminal Appeal No. 130 "A" of 2015 on 16/12/2016, the petitioner's sentence was reduced. For purposes of passing the message clearly, I must state that by reducing the sentence the judge exercised discretion. In such case, the applicant may only appeal to the court of appeal if he feels aggrieved by the sentence. He should not come back to this court on the pretext of Muruatetu decision.

4. This brings me to a critical point where I must express concern that convicted persons are now abusing the Muruatetu case. Accordingly, seeking for a further re-sentencing in this case is an abuse of court process.

5. In the upshot, I dismiss the application herein for re-sentencing. The applicant shall serve sentence as was imposed by Meoli J. It is so ordered.

Dated, signed and delivered at Narok through Teams Application this 14th day of December 2020

F. GIKONYO

JUDGE