

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

PETITION NO. 179 OF 2018

MOHAMED NOOR HUSSEIN.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. **Mohamed Noor Hussein (“the petitioner”)** was charged before the **Garissa Chief Magistrate’s Court Criminal Case No. 803 of 2003** with the offence of robbery with violence contrary to **section 296(2) of the Penal Code, Cap 63 of the Laws of Kenya**. He was tried found guilty and convicted accordingly. He was sentenced to suffer death as per the law provided.

2. The petitioner has now petitioned this court to review his sentence of death on the basis of the **Muruatetu Case**. That, he has been in custody now for 15 years. That his mitigating factors were not considered.

3. I have noted that the petitioner has not yet exhausted the appellate process for his conviction and sentence. Indeed, in **Meru Petition No. 205 of 2018, Mohamed Noor Hussein vs. Republic**, this court directed the petitioner herein to apply for leave to be allowed to appeal to the Court of Appeal against the decision of the High Court out of time.

4. The principal in the **Muruatetu Case** in my view applies where a convict has already exhausted all the appellate processes. In this case, the petitioner is yet to be heard by the Court of Appeal. That being the case, this petition is premature and it is struck out.

Orders accordingly.

SIGNED at Meru

A. MABEYA

JUDGE

DATED and DELIVERED at Meru this 28th day of February, 2019.

A. ONG’INJO

JUDGE