



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITUI**

**CRIMINAL MISC. APPLICATION NO. 80 OF 2018**

MUNYAO KALENGA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

**R U L I N G**

1. **Munyao Kalenga**, the Applicant was charged with the offence of **Murder**. After being taken through full trial he was found guilty, convicted and sentenced to **death**.
2. Aggrieved he appealed to the Court of Appeal where the matter is pending.
3. On **26<sup>th</sup> November, 2018**, the Applicant approached this Court by way of Chamber Summons seeking re-sentencing pursuant to the decision of the Supreme Court in **Petition No. 15 of 2015, Francis Karioko Muruatetu and Another vs. Republic (2017) eKLR**.
4. The Application is premised on grounds that following his conviction by the High Court, his sentence was commuted to **life imprisonment** in **2016** following the presidential decree but following the decision of the **Muruatetu Case** this Court has the jurisdiction to impose an appropriate sentence.
5. In response the learned State Counsel was of the view that the Application could be considered.
6. In his oral submission the Applicant told the Court that he has appealed to the Court of Appeal and he is waiting to be notified of the status of the Appeal. The fact that the Appeal is pending hearing means that the Applicant is yet to exhaust the Appellate jurisdiction.
7. I do appreciate the fact that the Supreme Court reached a finding that death sentence is unconstitutional. But, in the instant case, since the matter is pending before the Court of Appeal it would not be appropriate for me to grant the order sought.
8. In the premises the Application stands dismissed.
9. It is so ordered.

**Dated, Signed and Delivered at Kitui this 26<sup>th</sup> day of June, 2019.**

**L. N. MUTENDE**

**JUDGE**