

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERUGOYA

HIGH COURT PETITION NO. 7 OF 2018

JEREMIAH GATUIKU KIRIUNGI.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The appellant **JEREMIAH GATUIKU KIRIUNGI** had filed a petition arising from the judgment of the Court of Appeal in Appeal No. 73/08. In the petition, he was alleging that he had found new evidence and wanted the Court to order a retrial so that he could present the new evidence for consideration by the Court.

2. He has however filed grounds to amend that petition and now seeks an order for re-sentencing hearing. He relies on the Supreme Court decision in *Francis Kioko Muruatetu and Another -V- Republic (2017) eKLR*. He avers that the Supreme Court has ruled that the Mandatory Death Sentence has been declared unconstitutional. He was not given a chance to mitigate.

That the offence did not involve violence and there were no aggravating circumstances. He further states that he has been in prison for the last 14 years and has reformed. He prays for a chance to mitigate and the re-hearing on the sentence so that the Court can give an appropriate sentence.

3. The State did not oppose the application but urged the Court to give directions as there are many applications seeking these same orders.

4. What the applicant is seeking is sentencing re-hearing so that he can file mitigation. There are several petitions seeking similar orders like the ones the applicant is seeking.

5. In *Criminal Petition No. 8/2019 Jane Wanjiku Muriuki -V- Republic*, I have ruled that this Court has jurisdiction to hear the petition as the Court has the mandate under **Article 165 (3) of the Constitution** to hear and determine petitions as well as to enforce matters of rights and fundamental freedom enshrined in the Constitution.

6. The petition should therefore proceed before this Court and the petitioner to mitigate and the State be given a chance to respond.

Dated at Kerugoya this 31st day of October 2019.

L.W. GITARI

JUDGE