



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MALINDI**

**CONSTITUTIONAL PETITION NO. 29 OF 2018**

**KENGA CHEA THOYA ..... PETITIONER**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**JUDGEMENT**

1. The Petitioner, Kenga Chea Thoya through his petition filed on 5<sup>th</sup> April, 2018 seeks resentencing. His petition is premised on the decision of the Supreme Court in **Francis Karioko Murwatetu & another v Republic [2017] eKLR**.
2. The Republic opposes the petition through the preliminary objection dated 4<sup>th</sup> July, 2018 on the ground that the same is premature.
3. In **Francis Karioko Murwatetu** (supra) the Supreme Court issued orders as follows:

**“[112] Accordingly, with regards to the claims of the petitioners in this case, the Court makes the following Orders:**

***a) The mandatory nature of the death sentence as provided for under Section 204 of the Penal Code is hereby declared unconstitutional. For the avoidance of doubt, this order does not disturb the validity of the death sentence as contemplated under Article 26(3) of the Constitution.***

***b) This matter is hereby remitted to the High Court for re- hearing on sentence only, on a priority basis, and in conformity with this judgment.***

***c) The Attorney General, the Director of Public Prosecutions and any other relevant agencies shall prepare a detailed professional review in the context of this Judgment and Order made with a view to setting up a framework to deal with sentence re-hearing cases similar to that of the petitioners herein. The Attorney General is hereby granted twelve (12) months from the date of this Judgment to give a progress report to this Court on the same.***

***d) We direct that this Judgment be placed before the Speakers of the National Assembly and the Senate, the Attorney-General, and the Kenya Law Reform Commission, attended with a signal of the utmost urgency, for any necessary amendments, formulation and enactment of statute law, to give effect to this judgment on the mandatory nature of the death sentence and the parameters of what ought constitute life imprisonment.”***

4. The Petitioner’s case is similar to that of the petitioners in the cited Supreme Court decision. The decision of the Supreme Court is clear that all convicts of capital offences who have exhausted the appellate process will have to wait for the Attorney General, the Director of Public Prosecutions and other relevant agencies to set up a framework to deal with their sentence re-hearing. The Attorney General and the relevant agencies were given 12 months from 14<sup>th</sup> December, 2017, when the judgement was delivered, to give a progress report to the Supreme Court. The period has not lapsed.

5. It indeed would be contrary to the decision of the Supreme Court for this Court to proceed to re-sentence the Petitioner in the absence of a framework for sentence re-hearing. In the circumstances, I agree with the Respondent that although the Petitioner is actually entitled to sentence re-hearing, that right is yet to mature. He must bide his time. I therefore allow the preliminary objection by the Respondent and dismiss this petition.

**Dated, signed and delivered at Malindi this 27<sup>th</sup> day of Sept., 2018.**

**W. KORIR,**

**JUDGE OF THE HIGH COURT**