



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

CONSTITUTIONAL PETITION NO. 30 OF 2018

PETER MURIUKI.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

JUDGEMENT

1. The Republic which is the Respondent in the instant petition has opposed Peter Muriuki's petition for sentence re-hearing on the ground that the same is premature. Reliance is placed on Order No. (c) of the orders of the Supreme Court in **Francis Karioko Muruatetu and another v Republic [2017] eKLR** which forms the foundation of the Petitioner's prayer for resentencing.
2. The Petitioner's response to the preliminary objection is that other convicts in the same status as him have already been sentenced. He cites the decision of the Court of Appeal in **William Okungu Kittiny v Republic [2018] eKLR** and the decision of this Court (Majanja, J) in **Michael Kathewa Laichena & another v Republic [2018] eKLR**.
3. I have perused the decisions cited by the Petitioner in opposition to the Respondent's preliminary objection. In my view, the decision in **William Okungu Kittiny** did not in any way state that convicts who have exhausted the appellate process can now be sentenced despite the clear orders of the Supreme Court. A reading of paragraphs 10 and 11 of the decision of the Court of Appeal in **William Okungu Kittiny** clearly shows that the Court was aware that resentencing of persons who had exhausted the appellate process was to await a framework on sentence re-hearing to be formulated by the Attorney General and his team.
4. I reproduce paragraphs 10 and 11 of **William Okungu Kittiny**. They state:

“[10] By paragraph 111 of the judgment, the Supreme Court allowed sentence re-hearing only for the two petitioners in the matter before it and said:

In the meantime, existing or intending petitioners with similar cases ought not approach the Supreme Court directly but await appropriate guidance for the disposal of the same. The Attorney General is directed to urgently set up a frame work to deal with sentence re-hearing of cases relating to the mandatory nature of the death sentence which is similar to that of the petitioners in this case.

[11] Although the appellants' appeal was dismissed by the Court of Appeal on 20th June, 2008, which was then the last appellate court, the constitutional petition filed in the High Court revived the case and by the time the Supreme Court rendered its decision, this appeal was still pending.

The decision of the Supreme Court only discouraged persons from filing petitions to the Supreme Court but the decision does not prohibit courts below it from ordering sentence re-hearing in a matter pending before those courts. By Article 163 (7) of the Constitution, the decision of the Supreme Court has immediate and binding effect on all other courts. The decision of the Supreme Court opened the door for review of death sentences even in finalized cases.”

[Emphasis supplied].

5. In my view, the circumstances in **William Okungu Kittiny's** case are different from those of the Petitioner herein. The petition of **William Okungu Kittiny** was already in the judicial system by the time the Supreme Court delivered its judgement in **Francis Karioko Muruatetu**. As stated by the Court of Appeal, that matter was pending before the Court when **Francis Karioko Muruatetu** was decided. The Petitioner cannot therefore be allowed to rely on **William Okungu Kittiny** in seeking resentencing at this stage. He must abide by the clear orders of the Supreme Court.

6. By bringing this petition at this time, the Petitioner is in clear contravention of Order (c) of paragraph 112 in **Francis Karioko Muruatetu**. The said order states:

“(c) The Attorney General, the Director of Public Prosecutions and 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.”

7. It follows that I hold a different view from that expressed in the cited case of **Michael Kathewa Laichena**.

8. The Petitioner’s petition for sentence re-hearing is indeed premature. The same is dismissed.

Dated, signed and delivered at Malindi this 25th day of October, 2018.

W. KORIR,

JUDGE OF THE HIGH COURT