REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAROK

MISC. CR. APPLICATION NO 9 OF 2019

BENARD CHELUGET.....APPLICANT

-versus-

REPUBLIC.....RESPONDENT

RULING

Re-sentencing on basis of Muruatetu

[1] The Applicant filed NRK HCCRA NO. 30C OF 2016. He abandoned the other grounds and argued grounds on sentence only. The appeal on sentence was considered and dismissed by this court (Bwonwong'a J.) on 3rd October 2017. Nothing shows he preferred a second appeal. He has now applied for re-sentencing in this court on the basis of Muruatetu decision.

[2] He submitted that his mitigation was not considered. He stated mitigating factors to be: that he is now a trustee in prison, he has trained in welding, his ailing mum, and children need him. He also stated that he has spent a considerable period in prison which should be taken into account. In the circumstances, he considered the sentence of 10 years to be excessive and harsh. He, therefore, beseeched the court to reduce the said sentence.

[3] The prosecution counsel opposed the application and urged that; as his appeal on sentence was dismissed by the judge after due consideration of all factors, he cannot re-open proceedings on sentence through an application for re-sentencing. Accordingly, they viewed the application as an abuse of court process; and should be dismissed.

ANALYSIS AND DETERMINATION

[4] Quite often now, Muruatetu decision falls in the lips of and is being widely used by many convicted persons who feel their sentences are excessive. But, questions abound; whether in the circumstances of this case, the applicant can come back to this court for re-sentencing on the basis of the Muruatetu decision, or should he approach the Court of Appeal on a second appeal on sentence?

[5] In answering these questions, Ngugi J. in the case of JOHN KAGUNDA KARIUKI vs. REPUBLIC [2019] eKLR stated that: -

> ***''…only prisoners who had been sentenced to death pursuant to mandatory provisions of the law are entitled to new sentence hearing. For all others, they are entitled to urge the decisional law in their appeal in a bid to get lower sentences and no more. They cannot bring new applications for re-sentencing''.***

[6] Perhaps, it makes sense to address the procedural application of the Muruatetu decision. In my view, it is procedurally sound in a case such as this- where appeal has been decided by this court on sentence- for the applicant to make argument on reduced sentence on the basis of Muruatetu decision in an appeal to the Court of Appeal, rather than in an application for re-sentencing in this court. I could be wrong. But, I declare not foreclosure on the debate; I possess not such authority.

[7] Being of that orientation, it is clear the direction the court is taking. The applicant's appeal on sentence was heard and determined in this court. This is not a case falling in the category of section 204 of the Penal Code to which Muruatetu related directly. I should think, therefore, that, in the circumstances of this case, he can only make argument for reduced sentence in the Court of Appeal. Accordingly, I dismiss the application for re-sentencing.

Dated, signed and delivered at Narok through Microsoft Teams Online Application this 3rd day of February 2021

F. GIKONYO

JUDGE

In the Presence of:

1. Ms. Torosi for DPP

2. The appellant

3. Mr. Kasaso – Court Assistant

F. GIKONYO

JUDGE