



**REPUBLIC OF KENYA**

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

**MISC CRIMINAL APPLICATION NO. 25 OF 2020**

***(CORAM: F.M. GIKONYO J.)***

***(Revision from Original Conviction/Sentence in NAROK CMCRC No. 993 Of 2011 and NAROK HCCRA 140 of 2017)***

**MOHAMMED AFTAM DIMA..... APPLICANT**

**-versus-**

**REPUBLIC.....RESPONDENT**

**RULING**

**Re-sentencing**

[1] Before me is an undated application seeking for orders of a rehearing and resentencing pursuant to the Supreme Court decision in the matter of ***Francis Karioko Muruatetu & Another –vs- Republic [2017] eKLR*** and the decision in ***William okungo kittiny vs rep appeal no. 56 of 2013*** at Murang'a.

[2] The applicant was convicted and sentenced to death in respect of two counts of robbery contrary to section 295 as read with section 296(2) of the Penal Code. He filed appeal number **Narok HCCRA 140 of 2017** in which the appellate court reviewed the death sentenced and imposed a life sentence.

**Applicant's submission**

[3] The Applicant only pleads for re-sentencing. He urges the court to give him an opportunity to rejoin his family.

**Prosecution's submission**

[4] Ms. Koina for the Respondent in her submission opposed the application and argued that the high court has pronounced itself. Therefore, this court lacks the requisite jurisdiction to handle the petition. That the applicant cannot come back to this court as this will only open a Pandora's box and all convicts may come back. She opined that the applicant should proceed to the Court of Appeal for redress. She urged this court to dismiss the application.

**ANAYSIS AND DETERMINATION**

[5] The application herein is a request for re-sentencing. However, a challenge on the jurisdiction of the court to conduct a re-sentencing hearing has been raised by the respondent.

**Jurisdiction**

[6] Jurisdiction is a matter of great preliminary significance, for without it the court cannot adjudicate the dispute before it. See **Nyarangi, J.A.** in the often cited case of ***The Owners of Motor Vessel Lilian "S" vs. Caltex Oil (Kenya) Ltd [1989] KLR 1*** at page 14:

***“Jurisdiction is everything. Without it, a court has no power to take one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending the evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”***

[7] Does this court have jurisdiction to hear the application herein?

[8] The Applicant in this case filed appeal number HCCRA NO. 140 of 2017 which was heard; conviction was upheld but death sentence was quashed and in lieu thereof, life sentence was imposed by this court (Bwonwong'a J.) on 21<sup>st</sup> July, 2019. Two pertinent factual as well as substantial legal realities emerge from these facts. One; the decision of this court is post Muruatetu. Two; the judge reviewed sentence; set aside the death sentence and imposed life imprisonment. Accordingly, seeking resentencing from this court on the basis of Muruatetu decisional law is total abuse of court process. If the applicant is dissatisfied with the decision by this court on sentence, his recourse is to the Court of Appeal where he can make arguments for reduced sentence. Such abuse of court process is becoming widespread and headlong among convicts, and I think it is loathed in law and should be vehemently resisted by courts of law. On that basis, I agree with the DPP that this court has no jurisdiction to review sentence further, and I hereby dismiss the application before me.

**DATED, SIGNED AND DELIVERED AT NAROK THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 17TH DAY OF MAY, 2021**

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**F. M. GIKONYO**

**JUDGE**

**In the presence of:**

**1. The applicant**

**2. Ms. Torosi for the Republic**

**3. Mr. Kasaso CA**

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**F. M. GIKONYO**

**JUDGE**