

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

PETITION NO. E002 OF 2021

PETER KIMANI KABANDO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. This ruling relates to the petitioner's application dated the 3rd day of December 2020 in which he has sought revision of sentence.
2. The petitioner herein was convicted by Siakago Principal Magistrate in Criminal Case No. 78 of 2019 with the offence of robbery with violence contrary to Section 296(2) of the Penal Code and he was sentenced to death. He appealed to the High Court at Embu in Criminal Appeal No. 168 of 2009 which was dismissed. He then appealed to the Court of Appeal at Nyeri in Criminal Appeal No. 54 of 2014 which appeal was also dismissed.
3. At the hearing of the petition, he submitted that he had filed Petition No. 11 of 2020 at the High Court in Embu which was struck out as the court found that it did not have jurisdiction to entertain the petition.
4. He prayed for leniency stating that he has suffered while in prison and that the court should consider reducing his sentence. He urged the court to give him a lesser sentence so that he can go back home and assist his family. He further submitted that he has learnt some skills while in prison and has also attained some certificates.
5. In response, counsel for the respondent submitted that the petitioner's remedy lies in the Court of Appeal as his earlier petition being Petition No. 11 of 2020 was struck out by the High court at Embu.
6. The court has considered the petition and the submissions by the parties. I have also perused the ruling that was delivered in Petition No. 11 of 2020, the 18th June 2020 following the petition that was filed by the petitioner herein. In that petition he had sought orders for review of his sentence pursuant to the supreme court's decision in the **Francis Karioko Muruatetu case being Petition Nos. 15 and 16 of 2015**.
7. The learned Judge considered the application and found that the court did not have jurisdiction to entertain the petition for the reason that the petitioner herein had filed an appeal in the Court of Appeal and the same was dismissed which therefore meant that both the judgments of the trial court and the High Court were upheld.
8. As rightly submitted by counsel for the respondent, the petitioner's remedy lies in the Court of Appeal and not in this court. The High Court having dealt with a similar petition and having struck it out, the petitioner ought to have appealed against that order.
9. The application herein is therefore an abuse of the court process and the same is hereby dismissed.
10. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 11TH DAY OF MAY, 2021.

L. NJUGUNA

JUDGE

.....for the Petitioner

.....for the Respondent