



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CRIMINAL PETITION NO. 50 OF 2020
(IN THE MATTER OF AN INTENDED APPEAL)

BETWEEN

SAMMY LOTORE.....APPLICANT

VERSUS

REPUBLICRESPONDENT

JUDGMENT:

SAMMY LOTORE, the Petitioner herein, together with another namely James Todoyang Alias Lochede, were charged in the High Court with the offence of murder Contrary to section 203 as read with Section 204 of the Penal Code.

The particulars of this offence being that on the 11th day of April 2007 at Kaptibos shopping Centre in Baringo District, within the Rift Valley Province, the accused jointly with others not before Court murdered Elijah Kimoi Chepsergon.

The case was heard before justice P. M. Mwilu (as she then was) and judgment delivered on 30th day of December 2010.

The accused were both found guilty and were upon conviction sentenced to death.

The petitioner herein had preferred an appeal to the Court of Appeal of which he later withdrew and filed the current petition.

In the petition filed on 27th of July 2020, he reveals that he was sentenced to suffer death but the said sentence was later commuted to life imprisonment by the president. He has been in prison for a period of 13 years and urges this Court to invoke its unlimited inherent jurisdiction, and following the Supreme Court decision in Petition No. 15 of 2015 of *Francis Karioko Muruatetu and another -Vs- Republic*, vary the sentence downward.

The state opposed the petition on the ground that the High Court pronounced itself on that matter and gave a lawful sentence. They urged this Court not to interfere with the said sentence.

Petition No.15 and 16 of 2015 (consolidated), of *Francis Karioko Muruatetu and another -Vs- Republic (2017) eklr*, at paragraph 69, the Supreme Court held that:-

“....., we find that section 204 of the penal Code is inconsistent with the Constitution and invalid to the extent that it provided for the mandatory death sentence for murder. For avoidance of doubt, this decision does not outlaw the death penalty which is still applicable as a discretionary maximum punishment”.

From the foregoing, it therefore follows that death sentence is not illegal nor outlawed. What's illegal is mandatory death sentence. As such herein was condemned to suffer an illegal sentence.

On jurisdiction, the petition is against a High Court finding. Though under Article 165 (3)(a) the High Court has unlimited original jurisdiction in criminal and civil matters, under 165(6) its indicated that the Court has supervisory jurisdiction over the subordinate Courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over superior Courts. This simply means that the High Court as a superior Court does not have supervisory jurisdiction over itself. Appeals from the High Court goes to the Court of Appeal and not within the High Court. This Court therefore does not have jurisdiction to vary a sentence passed by another Judge.

Lastly, the sentence that was passed by the High Court, of death, was commuted by the President to life imprisonment. When such happens,

the Executive's discretion to commute a sentence, like the power to pardon, cannot be interfered with by the Judiciary. Our jurisdiction is shut at that point.

Given the foregoing, the petition lacks merit and is hereby dismissed.

S. M GITHINJI

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 13th day of May, 2021

In the presence of:-

Appellant appearing in person.

Ms. Limo for state

Gladys - Court assistant