



REPUBLIC OF KENYA



KENYA LAW
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**James Gitau Njuguna & another v Republic (Criminal Appeal
E278 of 2018) [2021] KEHC 9790 (KLR) (Crim) (21 July 2021) (Judgment)**

Neutral citation: [2021] KEHC 9790 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CRIMINAL

CRIMINAL APPEAL E278 OF 2018

JM BWONWONG'A, J

JULY 21, 2021

BETWEEN

JAMES GITAU NJUGUNA 1ST APPLICANT

SILAS NDUNGU WAIHENYA 2ND APPLICANT

AND

REPUBLIC RESPONDENT

*(Being an application for review of the sentence of the Court of Appeal dated
04/03/2014, 1. James Gitau Njuguna 2. Silas Ndungu Waibhenya v Republic)*

JUDGMENT

The case for the applicants

1. The applicants have applied for review of their sentence of death in respect of the offence of murder contrary to section 203 as read with section 204 of the *Penal Code* (cap 63) laws of Kenya.
2. The case of the applicants is reported as *James Gitau Njuguna & another v Republic* [2014] eKLR.
3. The applicants applied under certificate of urgency for review of their death penalty sentence which was imposed by the High Court. Their appeal to the Court of Appeal was dismissed in its entirety.
4. Their application is based on the decision of the Supreme Court in *Francis Karioko Muruatetu & another* [2017] eKLR, which declared as unconstitutional the automatic imposition of the death penalty upon an accused person who is convicted of murder.
5. In their supporting affidavits and submissions, they have set out the grounds and averments in support of their applications, which I have declined to set out herein for reasons that will appear below in this ruling.



The case for the respondent

6. Counsel for the respondent (Ms Joy Adhiambo), submitted that this court has jurisdiction to entertain and determine the application. Her submission is based on the Supreme Court decision in Francis Karioko Muruatetu & Another, *supra*.

Findings by the court

7. This application raises a point of law in relation to the jurisdiction of this court, which I raised on my own motion (*suo motu*).
8. The issue of jurisdiction has to be determined first before the court proceeds to consider whether it has jurisdiction to entertain and determine the application on the merits.
9. I find that the Court of Appeal dismissed the appeal of the applicants and proceeded to confirm both the conviction and the death penalty.
10. In the circumstances, I find that this court became *functus officio* when it sentenced the applicants to a sentence of death. Thereafter the applicants appealed to the Court of Appeal, which dismissed their appeal in respect both the conviction and sentence.
11. It therefore follows that this court lacks jurisdiction to entertain and determine the application of the applicants. It is for this reason that I declined to set out the grounds in the notice of motions and the averments of the applicants in their affidavits.
12. In the premises, I find that the appeal is incompetent and is hereby struck out.

RULING SIGNED, DATED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 21ST DAY OF JULY 2022.

J M BWONWONG'A

JUDGE

In the presence of-

Mr Kinyua: Court Assistant

The applicants in person.

Ms Akunja for the respondent.

