



REPUBLIC OF KENYA

HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS CRIMINAL DIVISION

MISC. CRIMINAL APPL. 319 OF 2019

PETER KINYUA MWANGIAPPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONSRESPONDENT

RULING

1. By an undated application filed in court on 17th June 2019, the applicant is seeking for; re-sentencing based on the decision in the “Supreme Court’s Application No. 5 of 2015”. Further, the period he spent in custody be considered, and the sentence meted be reduced accordingly. The application is supported by the applicant’s own affidavit dated; 4th June 2020.

2. In a nutshell, he avers that, he was charged with the offence of; murder contrary to; section 203, as read together with; section 204 of the Penal Code (cap63) laws of Kenya. He was tried vide; High Court Criminal Case No. 45 of 2009 and sentenced to death, on 26th February 2015.

3. Having been dissatisfied with the decision of the High Court, he filed an appeal vide Criminal Appeal No. 130 of 2016, to the Court of Appeal. Subsequently, the death sentence was commuted to; life imprisonment; pursuant to, Article 165(3) of the Constitution of Kenya.

4. The application was served but no formal response was filed thereto. It was disposed of vide filing of submissions, which I have fully considered herein. In that regard, I note that, the applicant’s submissions have dealt greatly with mitigating factors to consider while meting out sentence, and the Respondents’ submissions centered on; the guidelines given by the Supreme Court of Kenya, under paragraph 71 of the Muruatetu’s case, which should be considered during sentencing.

5. It also suffices to note that, the court ordered for a sentence review report, which was availed. It indicates that, the applicant is suitable for; favourable re-sentencing and that, the Probation Department will undertake to continue his rehabilitation of; alcohol, drug abuse, anger management and instilling interpersonal relationship.

6. Be that as it were, one issue eluded the parties herein, that, this court has no jurisdiction to hear and determine this application. The reason being that, upon hearing the Criminal Appeal No. 130 of 2016, the Court of Appeal upheld the decision of the High Court, and dismissed the appeal in its entirety.

7. As such, the High court became *functus officio*. This is a principle of law that prevents the re-opening of a matter before a court that rendered the final decision thereon. Thus, the only court that can hear the application on re-sentencing is, the court of Appeal.

8. It is also noteworthy that, the applicant was less than candid in the supporting affidavit when he failed to disclose that, the appeal to the Court of Appeal was dismissed in its entirety and merely stated;

“I am the appellant in KCA 130 of 2016”.

9. Further, even after filing this application, the applicant filed another High Court Criminal Application No. 7 of 2020, seeking for similar orders as herein which was struck out for being an abuse of the process of court.

10. In conclusion, I find that, this court has no jurisdiction to hear and determine the subject application due to want of jurisdiction, and consequently I hereby order and struck out the application accordingly.

It is so ordered.

DATED, AND SIGNED ON THIS, 3RD DAY OF JULY, 2021

GRACE L. NZIOKA

JUDGE

DELIVERED VIRTUALLY ON THIS 13TH DAY OF JULY, 2021, BY: -

LILLIAN MUTENDE

JUDGE

In the presence of:

Ms Kimaru for the Respondent

Applicant present in person

Mutai- Court assistant