

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

NYERI HIGH COURT CRIMINAL APPEALS NOS. 443, 444 AND 445, ALL OF 2000

(CONSOLIDATED)

1. RAPHAEL LOSIKE EMULIA (alias DOMINIC LOTRIM ESOKON)
2. JOSEPH ETABO LOGECHI (alias LOWASA NYAUNDIA)
3. GABRIEL EKIRU KITAE (alias JOSEPH ELIMLIM)...APPELLANTS/PETITIONERS

VERSUS

REPUBLIC.....RESPONDENT

RULING ON APPLICATION FOR RE-SENTENCING

1. On 24/10/2000 the Appellants herein were convicted in *Nanyuki SRM Criminal Case No. 1600 of 1999* for the offence of **robbery** contrary to **section 296(2)** of the **Penal Code**. They were each sentenced to death as by law provided. Their sentences were later commuted to life imprisonment by executive clemency.
2. The Appellants' first appeals to the **High Court** (the present appeals) and second appeals to the **Court of Appeal** against both conviction and sentence were all dismissed.
3. On 14th December 2017 the **Supreme Court of Kenya** issued its judgment in *Petitions Nos. 15 and 16 of 2015 (Consolidated), Francis Karioko Muruatetu & Another –vs- Republic & Others* (now commonly called the *Muruatetu Case*). In that judgment the apex court, *inter alia*, declared as unconstitutional the mandatory nature of the death sentence under **section 204** of the Penal Code for the offence of **murder** contrary to **section 203** of the same Code.
4. Following the said declaration by the **Supreme Court of Kenya**, there followed an avalanche of applications for re-sentencing by persons convicted and sentenced for robbery with violence contrary to section 296(2) of the Penal Code, and others convicted of various offences under the **Sexual Offences Act, 2006** that carried mandatory minimum sentences. The Appellants herein are such applicants.
5. On 26/05/2021 I heard the Appellants' application for re-sentencing and reserved ruling for today, 22nd July 2021. In the meantime, on 6th July 2021 the **Supreme Court of Kenya** issued directions regarding its aforesaid declaration in the Muruatetu Case. The first of those directions was –

“The decision of Muruatetu...(applies) only in respect to sentences (of death) for murder under sections 203 and 204 of the Penal Code.”

6. In the body of the “Directions of the Court” the apex court made it clear that its aforesaid declaration in the Muruatetu Case applied only to sentences of death passed upon convictions for murder under sections 203 and 204 of the Penal Code, and not to any other offences, not even to other offences carrying mandatory death sentences, like robbery with violence contrary to section 296(2) of the Penal Code.
7. That being the state of affairs now, this court can no longer consider the Appellants' applications here for re-sentencing as it has no jurisdiction to do so. Upon the directions of the **Supreme Court of Kenya**, the applications are misconceived and incompetent. They are hereby struck out. It is so ordered.

DATED AND SIGNED AT NANYUKI THIS 21ST DAY OF JULY 2021

H. P. G. WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 22ND DAY OF JULY 2021