

REPUBLIC OF KENYA

HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS CRIMINAL DIVISION

HC CRIMINAL REVISION 345 OF 2019

JOHN MWANGI WACHIRA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The subject revision herein, is based on a notice of motion application dated; 11th December 2019. In the said application, the applicant seeks for orders that, the court do invoke provisions of; section 333(2) of the Criminal Procedure Code and consider the period he was in custody while on trial and factor the same into the sentence meted against him.

2. The history of the matter reveals the facts that, the applicant was arraigned before the Chief Magistrate's Court at; Limuru vide Criminal Case Number 330 of 2009, charged with the offence of; robbery with violence contrary to section 296(2) of the Penal Code. He was convicted and sentenced to suffer death. Apparently, he appealed against the decision to the High Court vide HCCRA NO 642 of 2010, and then to the Court of Appeal vide Criminal Appeal Number 35 of 2015.

3. subsequent, to the decision in the case of Francis Karioko Muruatetu & another Vs Republic, Supreme Court of Kenya, Petition number 15 (2017) Eklr, the applicant sought for re-sentencing, in that, the Supreme Court declared the death sentence to be unconstitutional. Pursuant thereto, the applicant was re-sentenced by the trial court at Limuru whereupon the death sentence was set aside and substituted with an imprisonment term of seventeen (17) years. The court was clear that, the applicant had so far served nine (9) years in prison which would form part of the seventeen (17) years imposed.

4. As aforesaid, he now seeks that, the court reviews that sentence. However, it suffices to note that, the revisionary powers of the court are based on the parameters of section 362 of Criminal Procedure Code. Thus the order challenged must be challenged on the grounds of incorrectness, impropriety and illegality. On the face value, the sentence pronounced by the trial court is proper, correct and legal as it is within the parameters of the law.

Secondly, the court that can only invoke the provisions of section 333(2) of Criminal Procedure Code, is the court sentencing the accused. That is; either the trial court or appellate court on appeal. Therefore, the only court in the given circumstances that, can invoke the subject provision, is the court that sentenced the applicant. This court has no jurisdiction. If the accused were to approach this court, he can only do so on an appeal, at the risk of enhanced sentence pursuant to the decision of Muruatetu delivered by the Supreme Court of Kenya on 6th July 2021.

5. The upshot of the aforesaid is that this application lacks merit and I dismiss it in its entirety.

DATED, DELIVERED VIRTUALLY AND SIGNED THIS 7TH DAY OF OCTOBER 2021.

GRACE L. NZIOKA

JUDGE

7TH OCTOBER 2021

IN THE PRESENCE OF;

MS NDOMBI FOR THE RESPONDENT

APPLICANT IN PERSON

EDWIN

-

COURT

ASSISTANT