



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT GARISSA**

**CRIMINAL MISC. APPL. NO. 16 OF 2020**

**MOHAMED HUSSEIN MOHAMED.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. On the 20<sup>th</sup> of February 2020 the Applicant filed a Chamber Summons seeking enforcement of Section 333(2) of the Criminal Procedure Code.

2. The background to this matter is that the Applicant with others not part of this application was tried at the Chief Magistrate's Court – Garissa with the offence of robbery with violence contrary to Section 296(2) of the Penal Code, arson contrary to Section 332(b) of the Penal Code and taking part in a riot contrary to Section 80 of the Penal Code.

3. Alongside the accused they were convicted to suffer death for the offence of robbery with violence the other sentences were held in abeyance.

4. Aggrieved by the conviction and sentence the accused appealed to this court. Two of the Appellants succeeded in their appeal. The current Applicants conviction and sentence were upheld in respect of the 1<sup>st</sup> and 3<sup>rd</sup> Counts respectively. On the 4<sup>th</sup> Count he was sentenced to 6 months which sentence was held in abeyance.

5. The Applicant appealed to the Court of Appeal which upheld the conviction and substituted the death sentence following the **Muruatetu case**, on 8<sup>th</sup> February 2015 the death sentence was set aside and, in its place, he was jailed for 20 years.

6. The State opposed the application on grounds that since the Court of Appeal pronounced itself on the sentence this court lacks jurisdiction and in any event the death sentence is yet to be outlawed.

7. This court cannot sit to revise a decision of the Court of Appeal.

Secondly the matter being raised now should have been raised at the time of either the 2<sup>nd</sup> appeal so that in revising the sentence the Court of Appeal would have taken up the issue.

8. The Applicant benefited from the **Muruatetu** judgement which was construed for a while to have applied to all other matters involving mandatory and maximum sentences.

9. The Supreme Court in its directive of 6<sup>th</sup> of July 2021 explained itself further so that if the Applicant was before the Court of Appeal today it is highly unlikely that the principles in the **Muruatetu** would have been applied in his situation.

10. He was lucky to have been a recipient of what the Supreme Court dubbed as a confusion in the interpretation of its judgement.

He ought not to push his luck further.

11. For the above reasons his application is dismissed.

**DATED, DELIVERED AND SIGNED AT GARISSA THIS 7<sup>TH</sup> DAY OF OCTOBER, 2021.**

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**ALI-ARONI**

**JUDGE**