

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MAKUENI

HC.CR REV. NO. 015 OF 2020

MUSEMBI MUTINDA MUSAU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. Before me is a Summons filed on 2nd December 2020 for revision of sentence in which the applicant relies on the Supreme Court reasoning in Petition 15 and 16 of 2015 – the famous Stanley Muruatetu case.
2. The application is supported by a supporting affidavit in which the applicant deposed that he was sentenced to 7 years for robbery.
3. The application has been opposed through a replying affidavit sworn on 12/07/2021 by Ann Penny Gakumu the Senior Principal Prosecuting Counsel, in which it was deponed that the directions of the Supreme Court in the Muruatetu case related to mandatory death sentences for murder cases under section 203 and 204 of the Penal Code, while in the present case the applicant was sentenced to 7 years imprisonment for robbery with violence in Kilungu SPM Criminal Case No. 776 of 2017.
4. It was further deponed that the trial court considered the mitigating factors before sentencing herein.
5. I have considered the application and the opposition to the same by the State. I have also perused the trial court file which was availed to me.
6. I note that in determining the sentence, the trial court stated as follows –

“I note that the two accused persons are very young. Guided by the Supreme Court’s decision on death sentence, I will totally abide by the same. I do therefore, sentence him to serve 7 years imprisonment.”

7. From the above record on sentencing by the trial court therefore, it cannot be said that the trial court did not apply the Muruatetu Court case Supreme Court directions. By coming to this court therefore for review of sentence based on the Muruatetu case, the appellant can rightly be said to be abusing the court process. He can of course appeal to the High Court, but should not come here for review of sentence under the Muruatetu case reasoning.
8. I thus find no merits in the application, and the same is dismissed.

DELIVERED, SIGNED & DATED THIS 5TH DAY OF OCTOBER 2021, IN OPEN COURT AT MAKUENI.

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GEORGE DULU

JUDGE