

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

PETITION NO.E015 OF 2021 AT BUSIA FROM

ORIGINAL CASE NO.12 OF 2016 AT BUSIA HIGH COURT

DAVID AMUKU.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

[1] What we have here by way of notice of motion filed on 24th June 2021 and another filed on 12th July 2021 is an application grounded on the famous of Muruatetu and another in which the Supreme Court of Kenya held that the mandatory nature of the death sentence under **s.204** of the **Penal Code** was unconstitutional but not the death sentence itself. In essence, the death sentence was confirmed and retained as a lawful punishment under Statute Law.

In the circumstances, the present application is clearly a misconception and the outcome of bad advise given to the applicant by ignorant persons without any knowledge of Law. It seeks to have this court declare the death sentence unconstitutional and order a re-trial of the entire case. This is tantamount to asking this court to sit on appeal against the decision of a higher court, in fact, the highest court in the Republic of Kenya.

[2] Rather than this petition, the applicant ought to have followed the correct route of filing an appeal in the Court of Appeal against the conviction and sentence by this court. He cannot be heard to say that the onset of the covid 19 pandemic made him delay in the filing of the appeal as nothing prevented him to move this court by way of a notice of motion or chamber summons for leave to file appeal out of time. His submissions in this petition related more to an argument in support of an appeal rather than a petition of this nature. In sum, the present application is not only devoid of merit but also grossly misconceived. It is therefore dismissed with advice to the applicant to obtain necessary leave and appeal his conviction and sentence to the Court of Appeal.

J.R. KARANJAH

J U D G E

[READ & SIGNED THIS 11TH DAY OF NOVEMBER 2021]