



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL REVISION NO. E238 OF 2021

JOSEPH KINYUA MUGO.....APPLICANT

VS.

REPUBLIC.....RESPONDENT

RULING

1. The applicant, **JOSPEH KINYUA MUGO** was arrested on 13th March, 2008 and charged before Thika Chief Magistrate's Court with the offence of robbery with violence contrary to **section 296(2)** of the Penal Code. On 28th October, 2009, the applicant was convicted as charged and was sentenced to death.

2. The applicant petitioned the trial court for his re-sentencing following the Supreme Court's decision in the case **FRANCIS KARIOKO MURUATETU & ANOTHER VS. REPUBLIC & AOTHERS, Petition No. 15 & 16 (consolidated) of the 2015**. The trial court, on hearing that petition re-sentenced the applicant to 10 years' imprisonment.

3. The applicant has brought before this Court a chamber summons's application. He seeks by that application for credit on his sentence be given to him for the period he was held in custody prior to his re-sentence. He has cited **Section 333(2)** of the Criminal Procedure Code which is in the following terms:-

“(2) Subject to the provisions of section 38 of the Penal Code every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code.

Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.”

4. The resentencing of the applicant, as stated above was as a result of erroneous interpretation of the case of **FRANCIS KARIOKO MURUATETU & ANOTHER VS. REPUBLIC NO. 15 OF 2015**. This Supreme Court decision determined that mandatory sentence in murder cases was unconstitutional. Many court thereafter, in error, applied that principal to all cases where the sentence was mandatory and this led to the Supreme Court issuing directives to clearly state that its decision on mandatory sentence only applied in murder cases.

5. It will then be seen that the re-sentencing of the applicant of 10 years' imprisonment, for the offence of robbery with violence, fell in error and that error cannot lead this Court to allow the applicant benefit from the provisions of **Section 333(2)** set out above.

DISPOSITION

6. For the reasons set out above, the chamber summons filed on 13th August, 2021 is dismissed.

RULING DATED AND DELIVERED AT KIAMBU THIS 18TH DAY OF NOVEMBER, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant: Maurice

For the Applicants:

For the Respondent: Mr. Kasyoka

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE