

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HC. MISC. CR. APPLICATION NO. E021 OF 2021

JOHNSTONE MULUILA MBATIAPPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. Before me is a Notice of Motion filed by the applicant under section 169(1) and section 362 and 364 of the Criminal Procedure Code, as well as Article 22(1), 23(1), 25(a), (c), 29, 50 and 165(3) of the Constitution of Kenya 2010, together with section 203 and section 204 of the Penal Code.
2. It is an application for sentence review, based on the reasoning and directions given by the Supreme Court in the now famous case of **Francis Muruatetu & Another -vs- Republic**, Supreme Court Petition No. 15 of 2015 and 16 of 2015.
3. In the present application, the applicant seeks review of the sentence imposed on him in Makueni High Court Criminal Case No. 74 of 2017 wherein he was convicted of murder and sentenced to serve 30 years in prison.
4. The application proceeded by way of filing written submissions and I have perused and considered the written submissions of both the applicant and the Director of Public Prosecutions.
5. I will start by saying that the review jurisdiction of this court under section 362 and 364 of the Criminal Procedure Code (cap.75) is discretionary and applies only to correct mistakes of law or procedure committed by subordinate courts, not the High Court. The said revision powers also do not apply where the applicant has right of appeal.
6. Having considered this matter, I am of the view that the reasoning in the **Muruatetu** case, indeed, confers on this court powers to revise sentence even where the decision has been appealed to the highest court in Kenya. However, such powers are limited to situations where the mandatory death sentence has been imposed. In the present case however, the learned Judge sentenced the applicant to serve 30 years imprisonment, the **Muruatetu** case does not apply herein as the Judge did not impose the mandatory death sentence.
7. Thus this application is for dismissal. I hasten to add however, that the dismissal of this application does not remove the right of the applicant to appeal to the Court of Appeal against both conviction and sentence if he so wishes.
8. Coming back to this application, it is not merited and it is hereby dismissed.

It is so ordered.

DELIVERED, SIGNED & DATED THIS 17TH DAY OF NOVEMBER, 2021, IN OPEN COURT AT MAKUENI.

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GEORGE DULU

JUDGE