



REPUBLIC OF KENYA

IN THE HIGH COURT

AT KERUGOYA

CRIMINAL PETITION NO. 12 OF 2019

(From original conviction and sentence in Criminal Case No. 47 of 2013 of the Chief Magistrate’s Court at Kerugoya)

JOSEPH MUTHEE KAGO.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

1. The Petitioner, **Joseph Muthee Kago** was charged, tried, convicted and sentenced to suffer death for the offence of **Robbery with violence, contrary to Section 296(2) of the Penal Code in Kerugoya CMCC No. 47 of 2013**. The sentence was meted to the Petitioner on the 2<sup>nd</sup> December, 2014, having been arrested on the 24<sup>th</sup> January, 2013. He therefore spent a period of two years in custody before the sentence.

2. His appeal to this court vide **Kerugoya Criminal Case No. 47/2013** was dismissed. He then proceeded to file a further appeal to the Court of Appeal, being **No. 121 of 2019** which he withdrew.

3. Upon the above, the Petitioner filed the petition dated 5<sup>th</sup> September, 2019 whereupon he sought one prayer **only**, reduction of sentence on the strength of the “**Muruatetu**” decision. He did not petition for consideration of the period spent in custody before the sentence.

The death sentence was commuted to life imprisonment by the President, which the Petitioner is now serving

4. By a Petition dated 27<sup>th</sup> June, 2019, the Petitioner sought an order for resentencing pursuant to the “**Muruatetu**” **Supreme Court Decision – Francis Karioko Muruatetu & Others vs Republic [2017] eKLR**, and consideration of the period he spent in custody before and during the hearing of the case, up to the date of sentence, being two years.

5. The Petitioner filed very spirited mitigation and urged for reduction of the sentence. The Prosecution Counsel, Mr. Ashimosi filed written submissions on the 15<sup>th</sup> May, 2020 and urged that since the Petitioner had served 7 years in prison, a reduction to 15 years minus years spent in custody would be fair but upon the Court’s discretion.

6. The Petitioner would have benefitted from “**Muruatetu**” decision (Supra) on re-sentence hearing as well as consideration of the period he spent in custody pursuant to the “**Muruatetu**” decision.

7. I have considered the mitigating factors and the submissions as a whole. Reduction and or sentence re-hearing would have been possible before the 6<sup>th</sup> July, 2021, when the Supreme Court revisited its earlier decision on the Muruatetu case rendered on the 14<sup>th</sup> December, 2017.

8. The court gave policy guidelines and directions on the applicability of the said decision thus; the decision on Muruatetu and the guidelines apply **ONLY** in respect of sentences of murder under **Sections 203 and 204 of the Penal Code**, and not in any other offence.

9. By the above, it is very clear that no re-sentencing hearing should be entertained by any court, and this includes sentence for the offence of robbery with violence for which the Petitioner was charged, convicted and sentenced for.

10. For the foregoing, the petition cannot be entertained. It is dismissed.

Dated and Signed this.....day of.....2021

**J. N. MULWA**

**JUDGE**

**DATED AND DELIVERED AT KERUGOYA THIS 11<sup>TH</sup> DAY OF NOVEMBER, 2021**

**R. M. MWONGO**

**JUDGE**