



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL REVISION NO. E221 OF 2021

1. PATRICK MUMA ISAIAH

2. STEPHEN WAFULA KURIATI.....APPLICANTS

VERSUS

REPUBLICRESPONDENT

RULING

1. **PATRICK MUMA ISAIAH** and **STEPHEN WAFULA KURIATI**, the applicants, have filed a chamber summons application seeking re-sentencing in view of the decision of the Supreme Court in **FRANCIS KARIOKO MURUATETU & ANOTHER VS. REPUBLIC**.
2. The two applicants have also filed a petition seeking similar prayers.
3. The application and the petition cannot be granted as sought because the Supreme Court gave a direction in the Petition No. 15 & 16 (consolidated) of 2015 **FRANCIS KARIOKO MURUATETU & WILSON THIRIMBU MWANGI VS. REPUBLIC**, as follows:-

“[7] In the meantime, it is public knowledge, and taking judicial notice, we do agree with the observations of both Mr. Hassan and Mr. Ochiel, that while the report of the Task Force appointed by the Attorney General was awaited, courts below us have embarked on their own interpretation of this decision, applying it to cases relating to Section 296(2) of the Penal Code, and others under the Sexual Offences Act, presumably assuming that the decision by this Court in this particular matter was equally applicable to other statutes prescribing mandatory or minimum sentences. We state ..., there can be no justification for courts below us, to take the course that has now resulted in the pitiable state of incertitude and incoherence in the sentencing framework in the country, giving rise to an avalanche of applications for re-sentencing... We therefore reiterate that, this Court’s decision in Muruatetu, did not invalidate mandatory sentences or minimum sentences in the Penal Code, the Sexual Offences Act or any other statute...”

[15] To clear the confusion that exists with regard to the mandatory death sentence in offences other than murder, we direct in respect of other capital offences such as treason under Section 40 (3), robbery with violence under Section 296 (2), and attempted robbery with violence under Section 297 (2) of the Penal Code, that a challenge on the constitutional validity of the mandatory death penalty in such cases should be properly filed, presented, and fully argued before the High Court and escalated to the Court of Appeal, if necessary, at which a similar outcome as that in this case may be reached. Muruatetu as it now stands cannot directly be applicable to those cases.” (Underlining mine)

4. Muruatetu’s case cannot be applied to grant an order for re-sentencing as sought by the application. This is because Muruatetu’s principles only apply in murder cases. It follows the chamber summons and the petition for re-sentencing filed on 27th May, 2020 is dismissed.

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

MARY KASANGO

JUDGE

Coram:

COURT ASSISTANT: MAURICE

FOR THE APPLICANTS: N/A

FOR THE RESPONDENT: KASYOKA

COURT

RULING DELIVERED VIRTUALLY.

MARY KASANGO

JUDGE