



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT KERUGOYA**

**CRIMINAL PETITION NO. 1 OF 2018**

*(From original conviction and sentence in Criminal Case No. 771 of 2007 Kerugoya Law Court, Criminal Appeal. No 117 of 2008 Kerugoya High Court & Criminal Appeal No. 27 of 2010 Nyeri High Court)*

**DANSON NGARE NYAGA.....PETITIONER**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

1. The petitioner Danson Ngare Nyagah was convicted for the offence of **Robbery with Violence Contrary to Section 296 (2) of the Penal Code** on the 22.2.2008 and sentenced to suffer death.

He filed appeals to this court vide Kerugoya High Court Criminal Appeal No. 117 of 2008, and Court of Appeal at Nyeri 27 of 2010 – which were dismissed.

2. By his Petition filed on the 4.5.2018 seeking for sentence re-hearing pursuant to the Supreme Court decision in **Francis Karioko Muruatetu & Another V. Republic (2015), (2017) @KLR**

He is now serving life sentence after his sentence was commuted by the President.

3. The petitioner filed his mitigation on the 5.3.2020, and urged the court to also consider the period he was in custody during the hearing of the case.

The prosecution did not file any submissions but was duly represented at all times.

4. This is one of those many applications for re-sentence hearing that have been overtaken by events as the decision in the **Francis Karioko Muruatetu decision (Supra)** no longer apply in Robbery with Violence cases, among others.

5. On the **6.7.2021**, the Supreme Court while giving guidelines and directions on the application of its judgment in the **Murutetu decision (Supra)** rendered itself that the said decision delivered on the 14.12.2017 does not apply to all offences with mandatory minimum sentences but applies **ONLY** to the offence and sentence of **Murder under Section 203 and 204 of the Penal Code.**

That without a doubt excludes the offence of Robbery with Violence.

This court is therefore prohibited from entertaining sentence re-hearing, save for, and in respect of the offence of murder, for the time being

6. In the circumstances, the petition hereto cannot be entertained. It is dismissed.

**DATED AND SIGNED THIS.....DAY OF.....2021**

**J. N. MULWA**

**JUDGE**

**DATED AND DELIVERED AT KERUGOYA THIS 15TH DAY OF DECEMBER 2021**

**R. M. MWONGO**

**JUDGE**