



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT KERUGOYA**

**CRIMINAL PETITION NO. 20 OF 2019**

**ISAIAH WANGAI NGARI.....PETITIONER**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

1. The Petitioner was charged with the offence of Robbery with violence **Contrary to Section (2) of the Penal Code** and sentenced to death upon full hearing of the case.

His two appeals to the High Court and Court of Appeal vide Kerugoya High Court Appeal No. 29 of 2016 and Court of Appeal at Nyeri No. 37 of 2017 were heard and dismissed, thus the petitioner's options for further appeal were exhausted.

2. This petition is based on Supreme Court decision in **Francis Muruatetu Karioko, Petition No. 15 and 16 (Consolidated) (2017) eKLR** rendered on the 14.12.2017.

The Supreme Court ***Muruatetu*** decision dealt with the offence of **Murder Contrary to Section 203 of the Penal Code** and no other, whose penalty was declared unconstitutional – paragraph 69, and directed that the petitioners may apply for sentence – rehearing before the courts that sentenced them.

3. On the **6.7.2021** the Supreme Court revisited its decision on ***Muruatetu*** to give clarity on the applicability of the decision and gave policy guidelines as follows: -

**a. That the *Muruatetu* decision did not invalidate mandatory sentences of minimum sentenced in the Penal Code, the Sexual Offences Act or any other statute.**

**b. That the *Muruatetu* decision does not and is not directly applicable to sentences under Section 40 (3), treason, robbery with violence under Section 296 (2) and attempted robbery with violence – Section 297 (2) of the Penal Code.**

4. The court therefore emphasized that the decision of ***Muruatetu*** and the guidelines under the **6.7.2021** directions apply **only** in respect of sentence of **Murder under Section 203 and 204 of the Penal Code**. The offence of robbery with violence is thus excluded, and therefore not applicable. For the foregoing, this petition is dismissed.

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

**J. N. MULWA**

**JUDGE**

**DATED AND DELIVERED AT KERUGOYA THIS 15<sup>TH</sup> DAY OF DECEMBER, 2021**

**R. MWONGO**

**JUDGE**