



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MAKUENI

HC. MISC. CR. APPLICATION NO. E014 OF 2021

MUTUA MBALUKA.....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

1. This is an application for sentence re-hearing brought by way of Chamber Summons under the now famous case of **Francis Muruatetu & Another –vs- Republic Petition No. 16 of 2015**, a decision by the Supreme Court of Kenya.
2. The attachments to the affidavit in support of the application are the judgments in the respective courts, in which the applicant having been convicted of robbery with violence contrary to section 296(2) of the Penal Code was sentenced to death and his two appeals were dismissed.
3. The application was canvassed through filing of written submissions. I have perused and considered the submissions of the applicant and the Director of Public Prosecutions.
4. With regard to the request for review of sentence, the Supreme Court has revisited the **Muruatetu Petition No. 15 and 16 of 2015** (consolidated) and issued directions on 6<sup>th</sup> July 2021.
5. The Supreme Court clarified that their decision in the **Muruatetu** case only related to the mandatory death sentence for murder cases under section 203 and 204 of the Penal Code, and did not apply to any other statutory mandatory death sentences or minimum sentences.
6. Specifically, the Supreme Court issued the following guidelines.

**“18. Having considered all the foregoing, to obviate further delay and avoid confusion, we now issue these guidelines to assist the courts below as follows –**

- i. The decision of Muruatetu and these guidelines apply only in respect to sentences of murder under section 203 and 204 of the Penal Code.**
- ii. The Judiciary Sentencing Policy Guidelines to be revised in tandem with the new jurisprudence enunciated in Muruatetu.**
- iii. All offenders who have been subject to the mandatory death penalty and desire to be heard on sentence will be entitled to re-sentencing hearing.**
- iv. Where an appeal is pending before the court of Appeal, the High Court will entertain an application for re-sentencing upon being satisfied that the appeal has been withdrawn.**
- v. In re-sentencing hearing, the court must record the prosecution’s and the appellant’s submissions under section 329 of the Criminal Procedure Code as well as those of the victim before deciding on the suitable sentence.**
- vi. An application for re-sentencing arising from a trial before the High Court can only be entertained by the High Court, which has jurisdiction to do so and not the subordinate court.**
- vii. In re-hearing sentence for the charge of murder, both aggravating and mitigating factors such as the following will guide the court –**

- a. Age of the offender
- b. Being a first offender
- c. Whether the offender pleaded guilty.
- d. Character and record of the offender
- e. Commission of the offence in respect of gender based violence.
- f. The manner in which the offence was committed on the victim.
- g. The physical and psychological effect of the offence on the victim's family.
- h. Remorsefulness of the offender.
- i. Possibility of reform and social adaptation of the offender.
- j. Any other factor the court considers relevant.
- k. Where the appellant has lodged an appeal against sentence alone, the appellate court will proceed to receive submissions on re-sentencing.
- l. These guidelines will be followed by the High Court and the Court of Appeal in ongoing murder trials and appeals. They will also apply to sentences imposed under section 204 of the Penal Code before the decision in **Muruatetu**.

7. From the foregoing therefore, this being a matter where the applicant was convicted and sentenced for robbery with violence under section 296 of the Penal Code, this court has no jurisdiction to review the sentence imposed based on the **Muruatetu** decision.

8 . Consequently, the application for review of sentence is hereby dismissed.

**DELIVERED, SIGNED & DATED THIS 1<sup>ST</sup> DAY OF DECEMBER, 2021, IN OPEN COURT AT MAKUENI.**

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**GEORGE DULU**

**JUDGE**