

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

PETITION NO. 5 OF 2018

NICHOLAS KARANI KOMBO.....PETITIONER

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

1. The Petitioner, **Nicholas Karani Kombo**, was charged, tried and convicted of the **offence of robbery** with violence contrary to **Section 296(2)** of the **Penal Code** vide **Criminal Case No. 22 of 2012** at the Principal Magistrates Court in Wang'uru and sentenced to death. His subsequent appeals both to the High Court vide **Kerugoya High Court Criminal Appeal No. 98 of 2013** and the Court of Appeal in Nyeri were dismissed.

2. Vide an application dated 27th September 2018 and filed on 12th October 2018, the Petitioner sought for review of his sentence pursuant to the Supreme Court decision in **Francis Karioko Muruatetu & Another v Republic [2017] eKLR** delivered on 14th December 2017, on the ground that the said decision declared the mandatory nature of the death sentence unconstitutional.

3. Whereas the ***Muruatetu decision*** only dealt with the mandatory death penalty in murder cases, it is common knowledge that its application was modified to include all mandatory sentences following several decisions by the Court of Appeal in that regard which led to an avalanche of petitions for resentencing. However, through directions given on **6th July 2021**, **the Supreme Court made it clear that the Muruatetu decision is only applicable in murder cases and not any other cases** where the law provides for mandatory sentences. The Supreme Court stated *inter alia*:

“...Muruatetu cannot be the authority for stating that all provisions of the law prescribing mandatory or minimum sentences are inconsistent with the Constitution.

[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.”

4. The Supreme Court emphasized that the **Muruatetu decision and the guidelines** given in its directions of **6th July 2021 apply only in respect to sentences of murder under Sections 203 and 204 of the Penal Code**. What this means therefore is that the Petitioner is effectively locked out from benefiting from the ***Muruatetu decision*** since it is not applicable to the offence of robbery with violence. In the premises, the application dated 27th September 2018 is dismissed.

Orders accordingly.

DATED AND SIGNED THIS DAY OF 2021

HON. J. N. MULWA

JUDGE

DELIVERED AT KERUGOYA THIS 14TH DAY OF DECEMBER 2021

HON. R. MWONGO

JUDGE