



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAROK**

**MISC. CRIMINAL PETITION NO. E004 OF 2021**

***(CORAM: F.M. GIKONYO J.)***

***(Being a petition for resentencing from the judgment***

***on sentence in Narok High Court Criminal Case No. 33 of***

***2017 delivered on 26.9.2018 by Hon. Justice J.M. Bwonwonga, J)***

**ROBERT KAMWARO SAITABAU ALIAS RASTA.....PETITIONER**

**-VERSUS-**

**REPUBLIC.....RESPONDENT**

**JUDGEMENT**

[1]. The Petitioner herein was charged, tried and convicted of the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code by this court (Bwonwonga J.) in Narok High Court Criminal Case No. 33 of 2017 and sentenced to suffer death in the judgment delivered on 26.9.2018.

[2]. The Petitioner averred in his statement in court on 19/5/2021 that he appealed to the Court of Appeal but his appeal seems to have disappeared in the registry.

[3]. Meanwhile, the Petitioner filed an undated petition on 8<sup>th</sup> March 2021 seeking resentencing.

[4]. The Petition is premised on the Supreme Court decision in ***Francis Karioko Muruatetu & another Versus Republic*** and Section 333(2) of the CPC.

[5]. Mr. Karanja, counsel for the respondent argued that the application is misconceived as his counsel mitigated on the basis of ***Muruatetu*** . The trial court considered the ***Muruatetu*** decision in the judgement on sentence. He therefore contended that the petitioner cannot come back to this court on a matter handled by judge of concurrent jurisdiction. He advised that the petitioner should appeal to the Court of Appeal.

**ANALYSIS AND DETERMINATION**

[6]. The pertinent question is:

**Whether this court has jurisdiction to entertain resentencing in the circumstances of this petition?**

[7]. The petitioner was sentenced by this court (**Bwonwongá J**) post Muruatetu decision. The judge considered and took into consideration the decision in ***Francis Muruatetu & Another v R [2017] eKLR.***. In fact, the judge made it clear that he was in agreement with the cited decision (***Francis Muruatetu & Another v R [2017] eKLR,*** ) by the accused's counsel that there is discretion in this court to impose a non-death sentence.

[8]. From the arguments presented, I suppose the petitioner is under the misconception that death penalty was outlawed by the Muruatetu decisional law. Far from the truth. Thus, the mere fact that the court, after considering the circumstances of the case found it fit to impose and imposed a death sentence upon the applicant, does not bring this case within the scope of Muruatetu decisional law.

[9]. Accordingly, the only recourse for the petitioner is to pursue his appeal in the Court of Appeal and argue for reduced sentence. I find this petition to be misconceived and an abuse of court process. I dismiss it.

[10]. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS 6<sup>TH</sup> DAY OF DECEMBER 2021**

.....

**F. GIKONYO M.**

**JUDGE**

**In the presence of:**

1. Applicant
2. Karanja for Respondent
3. Kasaso - CA