



**REPUBLIC OF KENYA**

**HIGH COURT OF KENYA AT MILIMANI LAW COURTS**

**CRIMINAL DIVISION**

**MISCELLANEOUS CRIMINAL APPLICATION NO 241 OF 2019**

**CHARLES NJONJO GITURO.....APPLICANT**

**VERSUS**

**REPUBLIC.....DIRECTOR OF PUBLIC PROSECUTION**

**RULING**

The applicant herein CHARLES NJONJO GITURO, has filed this application dated 17.4.2019 seeking that he be allowed for retrial for resentencing. In his submissions, he asked that the court do consider the period he has spent in custody. He confirmed that he had, pursuant to the initial trial, been sentenced to death for the offence of murder. That upon making an appeal to the Court of Appeal, his conviction was upheld but his sentence was so reduced to 20 years imprisonment term.

In opposing the application, Mr. Mutuma, for the state, submitted that this court is functus officio in this matter and so has no jurisdiction to entertain this application. That the Court of Appeal, having passed the sentence, this court cannot again interfere with the same. That his only recourse is to move to the Supreme court.

I have considered the submissions of both the applicant and the side of the state. There is no doubt that following the appeal filed at the Court of Appeal against the Death sentence meted out by this court, the Court of Appeal indeed reduced his sentence from Death sentence to an imprisonment term of 20 years. I have indeed seen the judgment of the Court of Appeal in Criminal Appeal No. 512/2010, Charles Njonjo Gituro Versus Republic. The same is dated 22.3.2019. The applicant having moved to the Court of Appeal and canvassed his case before the Superior court, and the court having pronounced itself on the issue of sentence, I am persuaded by the submissions of counsel for the state that this court cannot now handle, entertain and or revisit this matter at all. And particularly on this issue of sentence..

I am in this regard persuaded by the finding of the Hon. Justice G. Ngenye in Bernard Munyao Ndunge Versus Republic (2020)eKLR, that the High Court ceases to have jurisdiction on a matter on which the Court of Appeal had made a finding. It would therefore be improper for this court to invoke and make any orders of revision of the sentence under section 333(2) of the Criminal Procedure Code. The court would be acting beyond its jurisdiction.

It is for this reason that I decline to grant orders prayed for in the applicant's application dated 17.4.2020. I dismiss the same wholly.

**D. O. OGEMBO**

**JUDGE**

**5.6.2020**

Court:

Ruling read out in open court in the presence of Ms. Kibathi for the state and the applicant.

**D. O. OGEMBO**

**JUDGE**

**5.6.2020**