



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

PETITION NO. 57 OF 2019

Consolidated with PETITION NO. 29 OF 2020

EUNICE IKAMBA.....1ST PETITIONER

JOSEPH NJAGE WAHERI..... 2ND PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

A. Introduction

1. The petitioners moved this court vide their petitions dated 9/12/2019 and 6/03/2020 respectively seeking for orders for resentencing pursuant to the Supreme Court's decision in **Petition No. 15 of 2015 Francis Karioko Muruatetu & Another –vs- Republic [2017] eKLR**.
2. The 1st petitioner in her supporting affidavit deposed that she was convicted and sentenced to suffer death for the offence of murder contrary to Section 203 a read with Section 204 of the Penal Code on 29/03/2017 in HCCR. No. 28 of 2012. In the Court of Appeal, she filed an appeal which she said she had decided to withdraw. She argued that since the decision in **Muruatetu's case** is binding on this court being the trial court, this court has jurisdiction to resentence the petitioner in line with the said decision.
3. the 2nd petitioner deposed that he was convicted by Embu High court in Criminal Case No. 28 of 2012 for the offence of murder contrary to Section 203 a read with Section 204 of the Penal Code and sentenced to suffer death on 29/03/2017. Like the 1st petitioner, he stated that the decision in **Muruatetu's case** is binding on this court and that the court has jurisdiction to deal resentencing.
4. The two petitions were consolidated and were argued orally. The 1st petitioner submitted that she had sought forgiveness from the deceased' family and which was granted and thus she sought resentencing. She further submitted that she had reformed in prison and had learned new courses and further that she was aged 69 years thus seeking leniency.
5. On his part, the 2nd petitioner submitted and prayed for leniency and non-custodial sentence for he had reconciled with the deceased' relative. He submitted that he was 72 years old.
6. Ms. Mati for the respondent submitted that she was not opposed to the petitions but asked that the court do consider the circumstances and the serious nature of the offence.

B. Analysis of the law

7. Before I venture into the merits of this petition, it is important to note that the accused persons were tried and convicted by the High Court of the offence of murder contrary to Section 203as read with 204 of the Penal Code. The petitioners were sentenced on 29/03/2020 to suffer death as provided by the law.
8. The issue that arises for determination here is whether this court has jurisdiction to review its own orders based on the principles laid down in the **Muruatetu Petition (supra)**.
9. It is imperative that the issue of jurisdiction of this court be determined. The jurisdiction of the High court is provided for under Article 165(3) of the Constitution. Under the said article, the High court has unlimited original jurisdiction in criminal and civil matters; jurisdiction to enforce bill of rights; appellate jurisdiction; interpretative jurisdiction; and any other jurisdiction, original or appellate, conferred on it by legislation. The High court further has supervisory jurisdiction over the subordinate courts on all criminal matters. The only scenario where

this court can entertain an application for review of the sentence is when exercising revisionary jurisdiction under Section 362 and 36 of the Criminal Procedure Code.

10. It is noted that the Criminal Procedure Code does not provide for revision by the High Court of its own orders which is the subject in this petition. It is trite law that a court of law can only exercise jurisdiction as conferred by the constitution or any other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. I note that the sentence which the petitioners seek to review was passed by this Honourable Court upon conviction of an offence of murder. As such the petitioners are basically seeking that this court do review its own decision regarding sentence.

11. **Section 379(1) of the Criminal Procedure Code** further provides that: -

“A person convicted on a trial held by the High Court and sentenced to death, or to imprisonment for a term exceeding twelve months, or to a fine exceeding two thousand shillings, may appeal to the Court of Appeal—

a) against the conviction, on grounds of law or of fact, or of mixed law and fact;

b) with the leave of the Court of Appeal, against the sentence, unless the sentence is one fixed by law.

12. It is my opinion that the right forum in the circumstances ought to be the Court of Appeal. Article 164(3) of the Constitution bestows the Court of Appeal with jurisdiction to hear appeals from the High Court; and any other court or tribunal as prescribed by an Act of Parliament.

13. It is my considered opinion that the instant petition is misconceived and incompetent and this court lacks jurisdiction to entertain and to determine the same.

14. Consequently, this petition is hereby struck out for want of jurisdiction.

15. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 10TH DAY OF JUNE, 2020.

F. MUCHEMI

JUDGE

In the presence of: -

Ms. Mati for the Respondent

Petitioners through Video Link