



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

PETITION NO. 8 OF 2020

FABIANO UTUKU MUKIRA.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

RULING

A. Introduction

1. By way of a petition dated 19/12/2019, the petitioner herein moved this court seeking for orders for resentencing pursuant to the Supreme Court's decision in **Francis Karioko Muruatetu & Another –vs- Republic [2017] eKLR**. He stated that he was initially charged before the High Court Embu with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code vide Criminal Case No. 23 of 2003 and sentenced to death on 5th May 2010. Being dissatisfied with the said sentence, the petitioner filed an appeal to the Court of Appeal Nyeri which was dismissed.

2. When the petition came up for hearing, the petitioner proceeded to argue the appeal by way of written submissions. Ms. Mati for the respondent in opposition to the petition made oral submissions where she argued that the sentence imposed was lawful and further that circumstances under which the offence was committed were aggravated since the petitioner was found guilty of murdering four innocent women one of them being a young child. The said offence took place on the deceased's farm thus demonstrating that the petitioner was thus the aggressor. The counsel thus prayed that the petition be dismissed.

3. The petitioner in rebuttal submitted that the court do consider the petition and how he was convicted and sentenced by the trial court. he told the court that he was now reformed for the time he has been in prison.

B. Analysis of the law

4. I have considered the application, the oral submissions made during the hearing by the applicant as well as the written submissions and find that the main issues for determination are as follows: -

a) Whether this court has the requisite jurisdiction to entertain this application.

b) If so, whether the application is merited.

5. It is imperative that the issue of jurisdiction of this court be determined first before hearing this application. 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 of the Criminal Procedure Code. The Criminal Procedure Code therefore does not provide for revision by the High Court of its own orders in regard to re-hearing on sentence is the subject in this petition.

6. It is trite law that a court of law can only exercise jurisdiction as conferred by the constitution or 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 applicant seeks to review was passed by this Honourable Court upon conviction of an offence of murder. As such the applicant is basically seeking that this court do review its own decision regarding sentence.

7. The petitioner after being convicted by this court of the offence of murder contrary to Section 203 as read with 204 of the Penal Code and sentenced to death did not file an appeal. However, he filed an application in the Court of Appeal seeking for orders to adduce additional evidence but was dismissed.

8. 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. 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.

9. It is my considered opinion that the right forum to seek for review of the order of this court is in the Court of Appeal.

10. It is my considered opinion that the instant application is misconceived and incompetent and that this court does not have jurisdiction to entertain it.

11. Consequently, this application is hereby struck out for want of jurisdiction.

12. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 8TH DAY OF JUNE, 2020.

F. MUCHEMI

JUDGE

In the presence of: -

Ms. Mati for the Respondent

Petitioner through Video Link