



**REPUBLIC OF KENYA**

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

**MISC. CRIMINAL APPLICATION NO. 94 OF 2019**

**MICHAEL ASHENE OMIDO.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The applicant was convicted by the lower court for the offence of robbery with violence contrary to Section 296 (2) of the Penal Code and sentenced to suffer death. His appeal to the High Court was unsuccessful. He then moved to the Court of Appeal which upheld the conviction but set aside the sentence of death and substituted it with 25 years imprisonment. In so doing the court said that it had considered that the mandatory death sentence is now unconstitutional as held by the Supreme Court in the case of **Francis Karioko Muruatetu & Another –V- Republic (2017) eKLR**.

2. The applicant has now come back to the High court seeking for re-sentencing, ostensibly on the basis of the Supreme Court decision in the **Muruatetu Case**. The application is based on the grounds that he has been in prison for 14 years and that he is reformed.

3. The Court of Appeal judgment for the applicant was delivered on 31<sup>st</sup> July, 2019. The *Muruatetu* judgment was delivered by the Supreme Court in 2017. The Court of Appeal substituted the death sentence imposed on the applicant on the basis of the Supreme Court decision in the *Muruatetu case* that the mandatory death sentence is now unconstitutional. The appeal court stated that it had considered all the circumstances of the case before imposing the sentence of 25 years.

4. In essence, what the applicant is seeking in the disguise of re-sentencing, is for this court to review the Court of Appeal's sentence. It is an abuse of the court process for the applicant to approach this court, a court subordinate to the Court of Appeal, asking it to review the sentence imposed by the Court of Appeal. This court has no power to do so. If the applicant was aggrieved by the decision of the Court of Appeal, the option was to move to the Supreme Court. It is then clear that the application is legally untenable.

5. The upshot is that the application lacks merit. The same is dismissed in its entirety.

**Delivered, dated and signed at Kakamega this 14<sup>th</sup> day of October, 2020.**

**J. NYAGA NJAGI**

**JUDGE**

In the presence of:

Mr. Mutua for respondent

Applicant - present through video link to G.K. Prison, Kakamega

Court Assistant - Polycap