



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL APPEAL NUMBER 26 OF 2020**

**MIKE KIPCHIRCHIR KIMONGO .....APPLICANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**RULING**

1. The applicant Mike Kipchirchir Kimongo filed Notice of Motion on 6/2/2020 seeking the following orders;

- a. ***THAT, this Honourable court be pleased to determine his application for re-sentencing of the sentence imposed against him.***
- b. ***THAT, it is within the rules of law for the same to be considered.***
- c. ***THAT, this application is grounded upon his annexed affidavit and other further grounds to be adduced at the hearing of this application thereof.***

2. In his supporting affidavit filed on the same date he depones; -

- a. ***THAT, he was charged with the offence of MURDER c/s 203 as read with 204 of the Penal Code and sentenced to death which was later commuted to life sentence.***
- b. ***THAT, he makes this application in regard to the above mentioned articles in reliance of article 165(3) (b) of the Constitution which empowers this Honourable court to handle application of this nature.***
- c. ***THAT, he is the applicant who has not exhausted all appeals.***
- d. ***THAT, the applicant herein was not accorded fair trial of sentencing from the trial court to the last court of appeal thus contravening article 50(2)(q) of the constitution while relying on the case of DOUGLAS MUTHAURA NTORIBI MISC.APP. NO 4 OF 2015 at MERU HIGH COURT and in the case of murder of JOHN NGANGA GACHERU AND ANTOHER IN HCCR.CASE NO. 31/016 AT KIAMBU HIGH COURT.***
- e. ***THAT, he is further relying in the case of FRANCIS KARIOKO MURUATETU AND ANTOHER VS REP (SUPREME COURT PETITION NO 15 OF 2015) that mandatory death sentence is unconstitutional thus seeking for appropriate sentence.***

3. The appellant was on 11/11/2011 sentenced to 30 years' imprisonment for Murder under section 203 as read with 204 of the Penal Code. It is not correct that he was sentenced to death which was later commuted to life imprisonment.

4. When the application came for hearing on 24/6/2020 his submissions were on the "dhulma" of the sentence meted to him. He submitted that he had been in remand for 4 years before being sentenced, and the court had not taken into consideration this period while sentencing him.

5. He further submitted on the skills he had acquired in prison, his reformation and his desire to have the period spent in custody considered sufficient for his offence.

6. The state through Ms Wambui prosecuting counsel opposed his application on the ground that the principles in the *Muruatetu* Case were inapplicable because the applicant was not sentenced to death. That if he was dissatisfied with the sentence meted he ought to have gone to

the Court of Appeal. She urged the court to dismiss his application.

7. In rejoinder the applicant raised issues challenging his conviction that he was convicted on the evidence of a single witness who came from 9 km away and that there was no eye witness.

8. Clearly the applicant has issues with both his sentence and the conviction.

- On sentence the *Muruatetu* principle is not applicable to his case.
- Neither can this court review his sentence under Article 165(3) as read with Article 50(2)(q) of the Constitution.
- On conviction he has to move to the next court.

9. His application is not tenable. It reeks of an appeal against the conviction and sentence by this court and he ought to file an appeal.

10. The application is dismissed.

**Dated Delivered and signed at Nakuru this 9<sup>th</sup> Day of October 2020.**

**Mumbua T Matheka**

**Judge**

**In the presence of: VIA ZOOM**

**Edna CA**

**Applicant; Present**

**Ms. Rita**