

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

Coram: D. K. Kemei – J

MISCELLANEOUS CRIMINAL APPL. NO. 62 OF 2020

KIOKO KAWEMBE.....APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING ON RE- SENTENCING

1. **Kioko Kawembe**, the Applicant herein was charged with the offence of robbery with violence contrary to section 296(2) of the Penal Code.

2. The Applicant pleaded not guilty and the case proceeded to full hearing. He was convicted of the count he was charged and the trial court sentenced him to serve a death sentence.

3. The Applicant was aggrieved by that decision and filed an appeal to the High Court against both the conviction and sentence. The appeal was duly heard. A judgment was delivered on 19.12.2017 by this court. The judgment dismissed the appeal and upheld the conviction and sentence of the trial court.

4. The Applicant did file a notice of appeal dated 6.2.2018 on 6.3.2018 with intention to file a 2nd appeal against the decision of the High Court to the Court of Appeal. I have also seen the memorandum of appeal indicating to the Court of Appeal dissatisfaction with the decision of this court. In addition, the applicant has now filed the present application before this court in which he seeks review of sentence pursuant to the decision in **Francis Karioko Muruatetu & Another v R (2017) eKLR**.

5. Because the matter is already in the Court of Appeal, if this court ventures into handling the application on its merits it would be tantamount to concurrent consideration of the same matter in two different courts and a disregard for the hierarchy of courts. This court has no jurisdiction to supervise a superior court. In this regard the applicant's application ought to be directed to the Court of Appeal where his appeal is pending consideration. It is improper for the applicant who has already lodged an appeal to the Court of Appeal to come back to this court which has already discharged its duty and became functus officio. Such kind of conduct is akin to playing lottery. The applicant should be patient and wait for a determination of his appeal. Further, the applicant is advised that the appellate court is vested with the requisite powers to address his concerns regarding his appeal on both conviction and sentence.

6. The upshot of the foregoing is that the applicant's application filed on 15.6.2020 lacks merit. The same is dismissed.

It is so ordered.

Dated and delivered at Machakos this 10th day of December, 2020.

D. K. Kemei

Judge