



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KITUI**

**CRIMINAL MISC. APPLICATION NO. 47 OF 2018**

**DANIEL ISIKA MULWA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**R U L I N G**

1. **Daniel Isika Mulwa**, the Applicant was convicted for the offence of Murder and Sentenced to death as provided by the law.
2. On the **6<sup>th</sup> day of July, 2018**, he approached this court by way of Chamber Summons seeking re-sentencing. He averred that the death sentence was substituted with life imprisonment following the presidential decree. His matter is pending appeal but he called upon the court to consider granting him an appropriate sentence pursuant to the Supreme Court decision in **Petition No. 15 of 2015**.
3. In the affidavit in support of the application, he deposed that the Supreme Court determined the issue of sentence in the alluded to Petition.
4. At the hearing, the Appellant stated that he committed the offence because he was agitated but has now reformed. That he withdrew the appeal he had filed in the court of Appeal and was now seeking a **non-custodial sentence**.
5. The Respondent through learned State Counsel, **Mr. Mamba** did not oppose the application.
6. I have considered the application and the grounds relied upon. It is not in dispute that the Supreme Court declared the death sentence unconstitutional in the case of **Francis Muruatetu Vs. Republic, SC Petition No. 15 and 16 of 2015**. This is however a matter where I became *functus officio* on the **19<sup>th</sup> day of January 2016**. As at that date I addressed the matter with finality. The Applicant being aggrieved preferred an appeal for the Court of Appeal which was his entitlement.
7. It is alleged but not proved that the appeal was withdrawn.

It will be important for the court of Appeal to address what is before it prior to giving directions on whether or not the sentence imposed should be reconsidered.

8. In the result, I find the appeal lacking merit. Accordingly, it is dismissed.
9. It is so ordered.

**Dated, Signed and Delivered at Kitui this 11<sup>th</sup> day of September 2019.**

**L. N. MUTENDE**

**JUDGE**