

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

CRIMINAL REVISION NO. 109 OF 2018

REPUBLICRESPONDENT

VERSUS

WILFRED KIOJI MUTERIA.....APPLICANT

R U L I N G

1. The applicant herein **WILFRED KIOJI MUTERIA** was charged and convicted of murder in this court vide **Chuka High Court Murder No. 1 of 2016**. He was sentenced to death together with four others including Francis Murangiri Kagwima who is the applicant in **Criminal Misc. Case No.108 of 2018**.
2. The applicants were aggrieved by the decision of this court and exercised their rights to appeal which they did in Court of Appeal Nyeri as per Notice of Appeal filed herein dated 17th July, 2017.
3. The applicants have now moved this court through a Notice of Motion dated 19th April 2018 for review of their sentences in view of the Supreme Court decision in the case of **Republic -vs- Francis Kariuki Muruatetu and Another -vs- Republic [2017] eKLR**. The State/Respondent has opposed the applications on grounds that the Attorney General, Director of the Public Prosecution and other agencies are yet to formulate the framework and guidelines to guide the process to review the sentences pursuant to the Supreme Court decision.
4. This court has considered the two related applications and noted that the applicants have appealed against the decision of this court and told this court that their appeal is pending for determination at the Court of Appeal under the provisions of **Section 364 (5) of Criminal Procedure Code** this court cannot review a matter that is a subject of an appeal. The application before me is therefore incompetent and bad in law and the same is disallowed. This court is now **'functus officio'**. The applicants are advised to pursue their appeals which they have filed. This ruling shall apply to **Misc. Criminal Revision No. 108 of 2018**.

Dated, signed and delivered at Chuka this 6th day of November, 2018.

R. K. LIMO

JUDGE

6/11/2018

Ruling signed, dated and delivered in open court in presence of Machirah for State/Applicant and Muthomi for Respondent.

R.K. LIMO

JUDGE

6/11/2018