



REPUBLIC OF KENYA



**Nyaga v Republic (Criminal Appeal (Application)
E166 of 2024) [2025] KECA 947 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KECA 947 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPEAL (APPLICATION) E166 OF 2024
S OLE KANTAI, JW LESSIT & A ALI-ARONI, JJA
MAY 23, 2025**

BETWEEN

SILAS NDWIGA NYAGA APPLICANT

AND

REPUBLIC RESPONDENT

*(An application to restore the appeal for hearing and determination
against the Judgment of the High Court at Embu (L.M. Njuguna,
J.) delivered on 2nd October, 2017 in H. C. CRA No. 11 of 2014)*

RULING

1. The applicant Silas Ndwiga Nyaga has approached the Court by Motion asking in the main that his appeal be restored and the Court gives directions on the hearing of the appeal.
2. In the grounds in support of the application he says that he was charged with the offence of robbery with violence contrary to section 296(2) of the *Penal Code*, was convicted and his appeal to the High Court of Kenya at Embu was dismissed whereafter he filed an appeal to this Court; that he wrote a letter dated 5th June, 2020 to this Court where he withdrew the appeal; that:

“ ... That the application of withdrawal by the appellant/applicant was premised on the appellant’s mistaken belief that appellant/applicant would apply for resentencing at the trial court based on the Supreme Court decision in FRANCIS KARIOKO MURUATETU & ANOTHER VS REPUBLIC 2017, which position has since been clarified by the apex court a misinterpretation of its judgment.”
3. He further says that he mistakenly believed that his application for resentencing by the trial court could only be entertained upon proof that he had withdrawn the appeal; that his application to withdraw the appeal was a mistake and he wishes that his appeal be restored for hearing and determination.



4. When the application came up for hearing before us on 2nd April, 2025 the appellant was present from Embu Prison and urged us to allow the application.
5. Mr. Naulikha, learned counsel for Office of Director of Public Prosecutions had no objection to the application.
6. We observe that there was considerable confusion when the Supreme Court of Kenya pronounced itself in Francis Karioko Muruatetu & Another vs Republic [2017] eKLR and convicted persons withdrew appeals and rushed to trial courts for resentencing. That position drastically changed when the Supreme Court issued direction in Francis Karioko Muruatetu & Another vs Republic & 5 Others [2021 eKLR commonly referred to as Muruatetu 2 where that Court pronounced that its holding in the first case Francis Karioko Muruatetu (supra) only applied to murder cases.
7. The applicant here says that he withdrew the appeal to go for resentencing only to be met with the reality of the holding in Muruatetu 2 where his appeal could not apply as he had been charged with robbery with violence, not murder. He withdrew his appeal by mistake thinking that the trial court could give him a different sentence. We think in the circumstances that it is fair that the appellant have his day where he can be heard in the appeal on merit. The appeal is hereby restored for hearing. It will be listed for hearing in the normal way by the Court registry

DATED AND DELIVERED AT NYERI THIS 23RD DAY OF MAY, 2025.

S. OLE KANTAI

JUDGE OF APPEAL

J. LESIIT

JUDGE OF APPEAL

ALI - ARONI

