



REPUBLIC OF KENYA



KENYA LAW
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**Ntukai v Republic (Criminal Application E083 of 2024)
[2024] KECA 1880 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1880 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPLICATION E083 OF 2024
S OLE KANTAI, JW LESSIT & A ALI-ARONI, JJA
DECEMBER 5, 2024**

BETWEEN

LTISOISON STEPHEN NTUKAI APPLICANT

AND

REPUBLIC RESPONDENT

(An appeal against the Judgment of the High Court at Nyeri (Kasango, J.) delivered on 4th October, 2017 in HC Criminal Case No. 8 of 2016)

RULING

1. The applicant Ltsoison Stephen Ntukai prays in the Motion said to be brought under rules 42, 47 and 68(3) of The *Court of Appeal Rules* that we be pleased to reinstate the appeal he had previously withdrawn. He prays further that he be exempted from paying costs (possibly court fees) as he is a pauper. In grounds in support of the Motion and in his supporting affidavit he says that he was aggrieved by the decision of the trial court and he filed Criminal Appeal No. 179 of 2017 to this Court against conviction and sentence; that he withdrew that appeal through a letter and proceeded to file a petition to the High Court being Petition No. 9 of 2017 seeking resentencing in view of the judgment of the Supreme Court in Petition No. 15 of 2015 *Francis Karioko Muruatetu & Another vs. Republic* [2017] eKLR and *William Okungu Kittiny vs. Republic* [2018] eKLR; that the petition was dismissed by the High Court on grounds that it had already sentenced him and he should have appealed to this Court; finally:

“That the notice of withdrawal was induced by mistake and that the interests of justice require that the appeal be heard. ...”

2. We have seen Memorandum of Appeal that he intends to file.



3. When the Motion came up for hearing before us on 6th November, 2024 the applicant prayed that we allow the Motion. Mr. Naulikha, learned counsel for Office of Director of Public Prosecution had no objection to the application.
4. We have considered the circumstances where the applicant finds himself. After the Supreme Court of Kenya pronounced itself in the said Motion many convicted persons withdrew their appeals either in High Court or this Court and filed petitions for resentencing. Many benefitted from that position where their sentences were considered but that position changed when that Court in the subsequent case which has commonly come to be called *Muruatetu 2 (Francis Karioko Muruatetu & Another vs. Republic & 5 Others* [2021 eKLR) that Court clarified that its first decision only applied to murder cases but not other cases. Convicts like the applicant found themselves in a precarious position where they had withdrawn their appeals to apply for re- sentencing but were faced with a reality that the resentencing option was not available to them. Thus the move by such convicts, like the applicant, to retrace their steps and apply for re- instatement of their appeals.
5. We note that the respondent is not opposed to the application. We allow the Motion. The applicant's appeal which was withdrawn is hereby reinstated and will be heard in the normal way.

DATED AND DELIVERED AT NYERI THIS 5TH DAY OF DECEMBER, 2024.

S. ole KANTAI

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JUDGE OF APPEAL

J. LESIIT

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JUDGE OF APPEAL

ALI - ARONI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

