



**Nyangi v Republic (Criminal Petition 13 of 2019)
[2024] KEHC 674 (KLR) (31 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 674 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL PETITION 13 OF 2019**

**DK KEMEL, J
JANUARY 31, 2024**

BETWEEN

HEZRON MACHUKA NYANGI PETITIONER

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The Petitioner herein Hezron Machuka Nyangi filed the present Petition seeking re-sentencing in respect of Bungoma CM CR No. 1492 of 1999. The Petitioner's gravamen is that he was convicted and sentenced to death by the trial court for an offence of robbery with violence contrary to section 296 (2) of the Penal Code. That he lodged an appeal at Bungoma High Court vide HCRA No. 59 of 2002 which was dismissed. That he lodged a second appeal to the Court of Appeal but which has never been determined or been communicated to him. That owing to the change in jurisprudence brought about by the decision in Francis Karioko Muruatetu and 2 Others -vs Republic (2017) eKLR, he has decided to seek for resentencing. That he has since reformed while in prison and seeks to be given another chance as he has been in prison custody for over twenty years.
2. Miss Mwaniki for the Respondent opposed the application. She submitted that this court is already functus officio having decided the matter vide Bungoma HCRA No. 59 of 2002 wherein it dismissed the appeal. He submitted that the sentence was later commuted to life imprisonment through a presidential decree.
3. I have considered the application and the submissions presented. It is not in dispute that the Petitioner was sentenced to death in Bungoma CM CR No. 1492 of 1999. It is not in dispute that the Petitioner's appeal to this court vide HCRA No. 59 of 2002 was dismissed. It is also not in dispute that the Petitioner has lodged an appeal to the Court of Appeal but whose outcome is yet to be communicated to the Petitioner. It is also not in dispute that the Petitioner's sentence has since been commuted to the



life imprisonment through a presidential decree. That being the position, the issue for determination is whether the petition has merit.

4. As the Petitioner has not exhausted all his appeal processes, it is my considered view that this court is already functus officio and lacks jurisdiction to entertain the matter in view of the fact that a court of similar jurisdiction heard the petitioner's appeal and dismissed it. This court is functus officio.
5. It is noted that the Petitioner has sought reliance in the case of Francis Karioko Muruatetu & 2 Others VS R (2017) eKLR wherein the Supreme Court held that the mandatory nature of death sentence is unconstitutional and that courts have discretion to receive mitigation from offenders before passing an appropriate sentence. The Supreme Court later issued guidelines dated 6.7.2021 where it directed that the decisional law in Muruatetu (Supra) is not an authority to declare minimum sentences as unconstitutional and that the decision was only in regard to murder cases falling within its scope. The Petitioner's case being one of robbery with violence, the request for review of sentence on the basis of the Muruatetu case (supra) is without merit. The Petitioner whose appeal has been determined by this court ought to move to the Court of Appeal for redress as this court has become functus officio. In any case, the petitioner's appeal is still pending before the Court of Appeal and hence he should proceed and exhaust his appeal.
6. In view of the foregoing observations, it is my finding that the petition lacks merit. The same is dismissed.

DATED AND DELIVERED AT BUNGOMA THIS 31ST DAY OF JANUARY 2024.

D. KEMEI,

JUDGE

In the presence of :-

Hezron Michuka Petitioner

Miss Kibet for Respondent

Kizito Court Assistant

