



**Kirui v Republic (Criminal Petition E064 of 2023)
[2024] KEHC 13232 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13232 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL PETITION E064 OF 2023
JK SERGON, J
OCTOBER 31, 2024**

BETWEEN

KENNEDY KIPRONO KIRUI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars being that on the 6th day of May, 2016 at Chepseon Trading Centre in Londiani Sub-County within Kericho County, the accused person murdered Judy Cheronu.
2. At the end of the trial, the applicant was convicted of murder and sentenced to death by Lady Justice A. Ongeri. The Learned Judge held that she had considered the case of Francis Kariokor Muruatetu where the Supreme Court held that the mandatory nature of the death sentence is unlawful, however, the Supreme Court did not outlaw the death penalty and that the same sentence should be reserved for the most deserving cases.
3. During sentencing the Learned Judge noted that this is a case where the death penalty is deserved as the accused premeditated the offence and executed the same in cold blood and attempted to take his life after he had inflicted fatal injuries on the deceased.
4. The applicant has moved this court for resentencing vide a notice of motion and a supporting affidavit sworn by the applicant herein.
5. The applicant avers that he was charged and convicted for the offence of murder and sentenced to death vide Kericho High Court Criminal Case No. 16 of 2016.
6. The applicant avers that he appealed to the Court of Appeal at Nakuru but the same was never heard and determined.



7. The applicant avers that the instant application for re-sentencing was guided by the decision in *Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae) (Petition 15 & 16 of 2015* (Consolidated)) [2017] KESC 2 (KLR) (14 December 2017) (Judgement) in which the Supreme Court declared that the mandatory nature of the death sentence was unconstitutional.
8. The applicant avers that this application is premised on article 165 (3) (b) of *the Constitution* of Kenya which empowers this Court to entertain applications for resentencing.
9. The applicant therefore urged this Court to award a more lenient definite sentence in article 50 (2) (p) (q) of *the Constitution* of Kenya and invoke section 333 (2) of the Penal Code for inclusion of the period spent in remand in computation of the sentence to be awarded.
10. In this application, the applicant does not challenge conviction. He merely asked this court to reconsider the sentence. Being a decision of its own, the court has jurisdiction to reconsider the sentence it meted out against the petitioner in terms of the Muruatetu decision.
11. There are circumstances under which the court can vary or decline to vary the sentence meted out. That is entirely at the discretion of the court. I have gone through the record of the court's decision in the criminal trial, the judgement and sentence. I have noted the circumstances under which the offence was committed. I have also read the sentencing record of the court.
12. Having considered the material before this Court, it is clear that during sentencing this court considered the holding in the Muruatetu case in pronouncing the death sentence and deemed the death sentence appropriate in light of the facts and circumstances of the case. The application is found to be without merit, it is dismissed.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 31ST DAY OF OCTOBER, 2024.

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J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

S/Counsel – Musyoki

Applicant – Present in Person

