



**Rotich v Republic (Miscellaneous Criminal Application E005 of 2022)
[2024] KEHC 14950 (KLR) (28 November 2024) (Resentence)**

Neutral citation: [2024] KEHC 14950 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
MISCELLANEOUS CRIMINAL APPLICATION E005 OF 2022**

JK SERGON, J

NOVEMBER 28, 2024

BETWEEN

CHARLES KIBET ROTICH APPLICANT

AND

REPUBLIC RESPONDENT

RESENTENCE

1. The Applicant was charged and convicted for the offence of murder contrary to section 203 as read with section 204 of the Penal Code vide *High Court Criminal Case No. 26 of 2005* and was sentenced to server death.
2. The Applicant appealed to the Court of Appeal at Nakuru vide Criminal Appeal No. 355 of 2007 whereby the appeal was dismissed and the conviction and sentence affirmed.
3. The Applicant filed this application for resentencing. The Applicant stated that this court has the jurisdiction to hear and determine the application under article 165 (3) (b) of the Constitution of Kenya, 2010.
4. The Applicant cited the Supreme Court ruling in the *Francis Karioko Muruatetu* case, Petition No. 15 & 16 of 2015 where the apex court declared that the mandatory nature of the death sentence as unconstitutional.
5. The Applicant urged this Court to award him a lenient sentence under article 50 (2) (p) (q) of the Constitution of Kenya, 2010.
6. The Applicant urged this Court to invoke the provisions of section 333 (2) of the Criminal Procedure Code and that the time spent in remand be factored in the sentence to be awarded.
7. The prosecution did not oppose the said Application and left the matter to this court to exercise its jurisdiction.



8. The Officer in Charge Naivasha Maximum Security Prison wrote a letter of recommendation and stated that the applicant has been at the facility since January, 2012 and while incarcerated the applicant related well with members of staff and fellow inmates and took full advantage of the rehabilitation programmes offered at the institution. For example, he trained and achieved Grade II in Upholstery.
9. The family held a meeting on 17th September, 2024 and recorded minutes, in the said minutes which are on the court record, the family resolved to forgive the applicant who had killed his mother and had been incarcerated for a period of twenty (20) years.
10. The applicant was first arraigned in Court on 27th September, 2005 for plea taking and he was sentenced to death on 15th October, 2007. The applicant has been incarcerated for a period of 17 years.
11. In *Muruatetu & another v Republic; Katiba Institute & 4 others (Amicus Curiae)* (Petition 15 & 16 of 2015) [2021] KESC 31 (KLR) (6 July 2021) (Practice Directions) the Supreme Court set out guidelines on resentencing. The Supreme Court stated as follows;“ Having considered all the foregoing, to obviate further delay and avoid confusion, we now issue these guidelines to assist the courts below us as follows:
 - i. The decision of Muruatetu and these guidelines apply only in respect to sentences of murder under sections 203 and 204 of the *Penal Code*;
 - ii. The Judiciary Sentencing Policy Guidelines to be revised in tandem with the new jurisprudence enunciated in Muruatetu;
 - iii. All offenders who have been subject to the mandatory death penalty and desire to be heard on sentence will be entitled to re-sentencing hearing.
 - iv. Where an appeal is pending before the Court of Appeal, the High Court will entertain an application for re-sentencing upon being satisfied that the appeal has been withdrawn.
 - v. In re-sentencing hearing, the court must record the prosecution’s and the appellant’s submissions under section 329 of the Criminal Procedure Code, as well as those of the victims before deciding on the suitable sentence.
 - vi. An application for re-sentencing arising from a trial before the High Court can only be entertained by the High Court, which has jurisdiction to do so and not the subordinate court.
 - vii. In re-hearing sentence for the charge of murder, both aggravating and mitigating factors such as the following, will guide the court;
 - (a) Age of the offender;
 - (b) Being a first offender;
 - (c) Whether the offender pleaded guilty;
 - (d) Character and record of the offender;
 - (e) Commission of the offence in response to gender-based violence;
 - (f) The manner in which the offence was committed on the victim;
 - (g) The physical and psychological effect of the offence on the victim’s family;



- (h) Remorsefulness of the offender;
 - (i) The possibility of reform and social re-adaptation of the offender;
 - (j) Any other factor that the court considers relevant.
- viii. Where the appellant has lodged an appeal against sentence alone, the appellate court will proceed to receive submissions on re-sentencing.
- ix. These guidelines will be followed by the High Court and the Court of Appeal in ongoing murder trials and appeals. They will also apply to sentences imposed under section 204 of the Penal Code before the decision in *Muruatetu*.”

12. Pursuant to the Supreme Court decision in *Francis Kariokor Muruatetu* (*supra*), this court has the jurisdiction to resentence the applicant. Accordingly, and in consideration of the facts here, this court, sets aside the death sentence herein, and substitutes it with a sentence of 17 years imprisonment to run from the date of sentence i.e. on 15th October, 2007. It is apparent that the Applicant namely:- Charles Kibet Rotich, has served the sentence in full. He is consequently set free forthwith.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 28TH DAY OF NOVEMBER, 2024.

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J.K. SERGON

JUDGE

In the presence of:

Mr. Musyoki – Prosecutor

Mr. Langat – C/Assistant

Appellant – Present in Person

