



**Wanjiru v Republic (Miscellaneous Criminal Application E239 of 2020)
[2023] KEHC 304 (KLR) (Crim) (27 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 304 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS CRIMINAL APPLICATION E239 OF 2020
K KIMONDO, J
JANUARY 27, 2023**

BETWEEN

PAUL NG'ANG'A WANJIRU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was adjudged guilty of murder by the High Court in Nairobi Criminal Case 17 of 2012 on July 21, 2016. He was sentenced to suffer death on September 15, 2016.
2. His final appeal to the Court of Appeal at Nairobi in Criminal Appeal 36 of 2017 was dismissed on August 7, 2020.
3. The particulars of the charge and facts of the case are well captured in the two concurring judgments of the superior courts. From the nature of the present application, I see no reason to repeat them.
4. This is not a fresh appeal. The application craves for re-sentencing following the directions by the Supreme Court in *Francis Karioko Muruatetu & another v Republic, Consolidated Petitions Nos 15 & 16 of 2015 [2017] eKLR*. The court declared that the death sentence has not been outlawed; but it is no longer mandatory. The learned judges held-

' The mandatory nature of the death sentence as provided for under Section 204 of the *Penal Code* is hereby declared unconstitutional. For the avoidance of doubt, this order does not disturb the validity of the death sentence as contemplated under Article 26 (3) of the *Constitution*.'



5. The Supreme Court then gave the following directions-

' (111) It is prudent for the same Court that heard this matter to consider and evaluate mitigating submissions and evaluate the appropriate sentence befitting the offence committed by the petitioners. For the avoidance of doubt, the sentencing re-hearing we have allowed, applies only for the two petitioners herein. In the meantime, existing or intending Petitioners with similar cases ought not approach the Supreme Court directly but await appropriate guidelines for disposal of the same. The Attorney General is directed to urgently set up a framework to deal with sentence re-hearing of cases relating to the mandatory nature of the death sentence - which is similar to that of the petitioners in this case.'

6. The Supreme Court further directed the Attorney General, the Director of Public Prosecutions and other relevant agencies to prepare a detailed professional review with a view to setting up a framework to deal with sentence re-hearing. A report was to be submitted within 12 months of the judgment (now past).
7. The High Court thus has jurisdiction to re-sentence the applicant notwithstanding the lack of the framework by those government agencies. See *William Okungu Kittiny v Republic, Court of Appeal at Kisumu, Criminal Appeal 56 of 2013 (2018) eKLR, Michael Kathewa Laichena & Another v Republic, High Court, Meru, Petition 19 of 2017 [2018] eKLR.*
8. The applicant relied wholly on the submissions filed on June 30, 2022. He added that he has learnt his lesson in prison, has reformed and taken courses in theology. He has also attached a recommendation from the Prison Chaplain dated March 23, 2021.
9. The learned Prosecution Counsel, Ms Ntabo, relied on the submissions dated July 14, 2022. In principle, she does not oppose the motion but implored the court to consider all the aggravating circumstances; that a life was lost; and, the call for deterrent sentence.
10. I am alive that on August 15, 2016, the High Court explained to the applicant in writing his right to mitigate before sentence. The record shows that the applicant 'maintains he still does not want to offer mitigation'. The obvious inference is that the applicant was not remorseful. But I also note that at the time, the Supreme Court had not rendered its opinion above on the mandatory nature of the death penalty.
11. I have also considered that the applicant was a first offender and has had time to introspect and reform during his lengthy incarceration. He is now aged 43 years and repentant. However, the fresh clamour for clemency must be weighed against the gruesome murder of the deceased, a fact the applicant now owns-up to and seeks forgiveness.
12. Murder remains a grave felony which calls for a deterrent sentence. Considering the extenuating and aggravating factors, the period spent in pre-trial and post-sentence custody, I re-sentence the applicant to serve 20 (twenty years) in jail. The sentence shall run from July 21, 2016, the date of his original conviction. The period spent in remand custody from the date his arrest on March 9, 2012 to June 13, 2013 (when he was released on bond) shall be deducted from the sentence.

DATED, SIGNED and DELIVERED at **NAIROBI** this 27th day of January 2023.

KANYI KIMONDO

JUDGE



Ruling read virtually on Microsoft Teams in the presence of: -

Applicant (in person).

Ms. Odhiambo for the respondent instructed by the Office of the Director of Public prosecutions.

Mr. Edwin Ombuna, Court Assistant.

