



**PGM v Republic (Miscellaneous Criminal Application 34 of 2020)
[2023] KEHC 22816 (KLR) (27 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22816 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS CRIMINAL APPLICATION 34 OF 2020
HK CHEMITEI, J
SEPTEMBER 27, 2023**

BETWEEN

PGM APPLICANT

AND

REPUBLIC RESPONDENT

(Judgment dated October 28, 2011 by Ouko J (as he then was))

RULING

1. In his undated chamber summons filed on November 20, 2019 at Nairobi before being transferred to Nakuru the applicant prayed that this court does determine the appropriate sentence which should be meted against him as by the time of the commission of the offence he was under 18 years and therefore a minor.
2. The applicant went ahead and cited several legal authorities to back up his claim. He prayed that the life sentence meted on him ought to be set aside and a definite period be imposed.
3. The learned state counsel opposed the application arguing that the issue of age was a fundamental one which ought to have been determined at trial and or appellate level. It was too late for it to be raised now. He urges the court to dismiss the application.
4. The court has perused the application including the judgment of this court dated October 28, 2011 by Ouko J (as he then was). It is true that the issue of age was not raised and the applicant cannot purport to raise it at this juncture.
5. In my view the applicant simply ought to have brought himself within the purview of the Muruatetu case as espoused by the Supreme court of Kenya. The same applies in all fours to this matter. I shall proceed to exercise the discretion of this court on those lines.



6. I have perused the resentencing report dated October 4, 2021 which is on record. The said report opines that the applicant may undergo a three years' probation period so as to ensure that his anger is managed and well guided accordingly.
7. Taking the totality of the issues raised therein I do not think that this is a case befitting a non-custodial sentence. There is also a report from prison dated October 13, 2021 which does not paint the applicant well. It was alleged that he was among some prisoners who extorted money from members of the public and fermenting strikes that is why he was being transferred to another prison.
8. Nonetheless in view of the Muruatetu authority I shall set aside the life imprisonment meted against the applicant and substitute it with a custodial sentence of Twenty (20) years from October 28, 2011.
9. Orders accordingly.

DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 27TH SEPTEMBER 2023.

H K CHEMITEI

JUDGE

