



REPUBLIC OF KENYA



**Litunya v Republic (Criminal Petition E018 of 2023)
[2023] KEHC 26207 (KLR) (30 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 26207 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL PETITION E018 OF 2023
DO OGEMBO, J
NOVEMBER 30, 2023**

BETWEEN

DOUGLAS MUSA LITUNYA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. By way of an application filed herein on 30-3-2023, the applicant Douglas Musa Litunya, has applied for resentencing before this court. The application is brought under Section 333(2) of the *Criminal Procedure Code* and also in the matter of the Supreme Court decision in Petition Nos 15 and 16 of the 2015, *Francis Karioko Muruatetu & Others v R*. He has pleaded for a lenient sentence. In the submissions the applicant has filed, he has expressed remorse and raised several factors of mitigation.
2. The prosecution has opposed this application on the basis that it is an abuse of the process of the court since this court already rendered its decision on this issue and applicant can only appeal to the Court of Appeal.
3. I have considered this application and the submissions made by the 2 parties. In his own submissions, the applicant was charged, tried and convicted of the offence of Murder contrary to section 203 as read with section 204 of the *Penal Code*. He was sentenced to death. This was on 30-6-2011. He has now applied to this court for resentencing following the decision of the Supreme Court in the *Muruatetu case* that declared mandatory death sentence to be unconstitutional.
4. This court is handling this matter without the benefit of perusing any record of proceedings leading to the sentence of the applicant. The Hon. Lady Justice Aburili in Misc. Criminal Application No. E006/2023 already found that the original trial file of the applicant is not traceable in the court registry.
5. However, the applicant has submitted that he withdrew the appeal he had filed at the Court of Appeal so as to pursue resentencing before the court. The Prosecution has not disputed this fact.



6. Having been sentenced under the old legal regime in which minimum sentences were deemed to be mandatory. I agree with the applicant that this is a case deserving of resentencing.
7. I have considered the mitigation that accused raised at the trial and general circumstances of this case. I allow this application of the applicant filed herein on 30-3-2023 and set aside the sentence of the trial court. I sentence the applicant to serve 30 years imprisonment. This sentence shall run from the date of his initial sentence on 30-6-2011. It is so ordered.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 30TH DAY OF NOVEMBER, 2023.

D.O. OGEMBO

JUDGE

30.11.2023

Court:

Ruling read out in court in the presence of the applicant and Mr. Kubebea for the State

D.O. OGEMBO

JUDGE

30.11.2023

