

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

MISC. CRIMINAL APPLICATION NO. E003 OF 2020

JOSEPH KUNYAMAL MUSEKENYA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant was sentence to suffer death after he was found guilty of murdering one Neratia ole Nkonyo on 20th December 2012 at Ngerende airstrip Narok south. He filed his appeal to the Court of Appeal which he later withdrew.
2. The application before this court is to reconsider resentencing following the Supreme court's decision in the now famous case of **Francis Muruatetu & another v. Republic, no 15 and 16 of 2015**.
3. In his submission he has pleaded that he was a first offender, he has been in custody for 9 years where he has greatly reformed and thus he was praying for a second chance.
4. He said that he was in custody from 25th December 2012 and all through the trial as he was unable to raise bond though granted by the court. He was thus remorseful having learned his hard lessons in prison. He submitted that he would be useful in the society if granted a second chance.
5. The learned state counsel opposed the application although agreeing with the principles espoused in the Muruatetu case and specifically the death penalty has not been outlawed. She said that each case should be handled separately based on the circumstances that led to the offence.
6. That the family of the deceased suffered immensely as they were left to fend for themselves. The murder itself was heinous and brutal as per the evidence on record. For the said reasons the application should not be allowed.
7. The court has perused the record and clearly it is apparent that the deceased died in the hands of the applicant in the cruellest and despicable manner. The injuries he sustained tells it all.
8. The import of punishment as provided in our statute books is to try as much as possible ameliorate the suffering of the victims. Naturally the two cannot much. Nonetheless it is meant to somehow compensate for the loss by having the perpetrator punished.
9. In this case I entirely agree with the respondent that the deceased died a violent death meted out by the applicant.
10. The applicant however can be considered for a second chance. The issue of being a first offender in a sense permits me to reconsider his prayers. I further appreciate that he has been in custody from December 2012 until when he was sentence. Holding him in jail for life may not be efficacious as the trend now is to ensure that there is a definite period one ought to be in custody.
11. Taking the facts and the circumstances herein I find that the death sentence meted against him be

reviewed which I hereby do and substitute it with a custodial sentence of 30 years with effect from 25th December 2012.

Dated signed and delivered via video link at Nakuru this 27th day of January 2022.

H K CHEMITEI.

JUDGE