



REPUBLIC OF KENYA



KENYA LAW
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**Ithang'atha v Republic (DPP) (Criminal Revision 415 of 2020)
[2022] KEHC 3348 (KLR) (25 May 2022) (Sentence)**

Neutral citation: [2022] KEHC 3348 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL REVISION 415 OF 2020
PJO OTIENO, J
MAY 25, 2022**

BETWEEN

STANELY KAMAIRO ITHANG'ATHA APPLICANT

AND

REPUBLIC (DPP) RESPONDENT

SENTENCE

1. The Applicant was charged with two counts of murder in Meru High Court Criminal Case No. 121 of 2003. He stood his trial and was convicted on both counts and sentenced to suffer death on the 28/01/2022 on the first count while the sentence on the second count was suspended pending appeal and execution of the sentence of death.
2. He felt aggrieved and dissatisfied with both conviction and therefore filed an appeal at the Court of Appeal being Nyeri CA CRA No 125 of 2008. The Court of Appeal while upholding the conviction on the basis that the evidence against the applicant was overwhelming found in addition that the sentence was meted out without giving to the applicant a chance to say something in mitigation.
3. For that reason the Court of Appeal directed that the matter be remitted back to the trial court which would record and take submissions for both the prosecution and the applicant and to decide on a befitting sentence. That Judgment by the Court of Appeal was delivered on November 19, 2010 and evidently took into account the fact that the trial court handing a murder trial was not bound to impose the death sentence as the only sentence. I consider that to have been an application of the principles set by the Supreme Court in *Francis Karioko Muruatetu –vs- Republic* in which the Supreme Court said:-
 - “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of Appeal, the High Court will entertain an application for re-sentencing upon being satisfied that the appeal has been withdrawn.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*.”
4. In the entire record of this application no material was availed to demonstrate what took place when the file was remitted to the trial court for resentencing. Indeed the Prosecutor informed the court that he was not aware of the outcome while the applicant said that he was resentenced to serve a life sentence on a date he could not remember and he had no document to show that he was indeed resentenced to serve life imprisonment.
 5. That state of affairs hampers the court's ability to deal with the matter exhaustively in that being a criminal matter the court is bound to be fully satisfied of what had transpired. It portend the prospects of this court giving a sentence that way contradict an earlier one which could have fully complied with the principles set by the Supreme Court. For the reason that there was an order for resentencing by



the Court of Appeal which the applicant say was undertaken, and without the decision thereby made available this court determines that it shall not be proper to engage in the process of resentencing for the second time.

6. For that reason the application is dismissed and the court orders that the sentence imposed pursuant to the Court of Appeal Judgment shall remain as the ultimate sentence the Applicant must serve. This matter must now rest and no other application on the same issue should be entertained by this court.

DATED, SIGNED AND DELIVERED 'ONLINE' AT KAKAMEGA THIS 25TH DAY OF MAY 2022.

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P.J.O OTIENO

JUDGE

In the presence of:

Ms. Nandwa for the Respondent

Applicant in person

Court Assistant: Mwenda

