



REPUBLIC OF KENYA



Magochi v Republic (Petition 21 of 2018) [2022] KEHC 481 (KLR) (25 May 2022) (Judgment)

Neutral citation: [2022] KEHC 481 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI**

PETITION 21 OF 2018

JN NJAGI, J

MAY 25, 2022

BETWEEN

JOHN WANJOHI MAGOCHI PETITIONER

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The application for determination was filed on 26th September 2018 and is seeking a reduction of sentence in view of the recent decision of the Supreme Court in Petition No. 15 & 16 of 2015 (Consolidated) *Francis Karioko Muruatetu v Republic* [2017] eKLR.
2. The petitioner was charged in the High Court at Nyeri in Criminal Case No. 16 of 2004 with the offence of murder contrary to Section 203 as read with 204 of the *Penal Code* in which he was sentenced to death which was later commuted to life imprisonment. He subsequently appealed to the Court of Appeal vide Court of Appeal No. 154 of 2006 whereby the appeal was found to lack merit and thus dismissed.
3. The petitioner has now sought rehearing on sentencing relying on the decision of the Supreme Court in Petition No. 15 & 16 of 2015 (Consolidated) Francis Karioko Muruatetu vs Republic and grant him a lesser sentence. He states that he has been in custody since 2004 when he was arrested and has served a term of 16 years imprisonment. He urges the court to find that the 16 years he has spent in custody to be deemed as sufficient and release him.
4. The respondent does not oppose the petition and states that the petitioner is of good character. The respondent leaves it to the court to determine whether the time spent in custody is sufficient.
5. On perusal of the application, the affidavit and the oral submissions, the main issue for determination herein is whether the petitioner is entitled to the orders sought herein.



6. Firstly, it is imperative to mention that the jurisdiction of a court of law is donated by the constitution and the statute. This was well stated by the Court of Appeal in Samuel Kamau Macharia v KCB & 2 others Civil Application No. 2 of 2011, [2012] eKLR where the court held that:-

“A court’s jurisdiction flows from either the constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”
7. It is not in dispute that the petitioner herein was convicted for the offence of murder and sentenced to death which sentence was later commuted to life imprisonment. He appealed against the conviction and sentence to the Court of Appeal in Nyeri which appeal was dismissed on 27th October 2006. The petitioner has now come back to the High Court seeking for review of the sentence by relying on the Supreme Court decision in Petition No. 15 & 16 of 2015 (Consolidated) Francis Karioko Muruatetu vs Republic wherein the Supreme Court ruled that the mandatory death sentence for murder is unconstitutional. The court allowed those convicted of murder before the date of that judgment to approach the High Court for re-sentence hearings.
8. The Supreme Court in the Muruatetu case gave the following guidelines with regard to mitigating factors which are applicable in a re-hearing sentence for the conviction of a murder charge:
 - (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) remorsefulness of the offender;
 - (g) the possibility of reform and social re-adaptation of the offender;
 - (h) any other factor that the Court considers relevant.
9. The petitioner in a lengthy mitigation to this court stated that he is remorseful for committing the offence and regrets his actions. That the offence was committed out of spontaneous anger and loss of control. That he has undergone counselling and stress management. That he has also undertaken vocational training courses in prison such as carpentry and has been of good conduct and behaviour while in prison. Further that he has reconciled with his family. He urged the court to consider the time spent in custody since arrest, that he was a first offender, his age at the time of committing the offence and thereby order for his immediate release.
10. The petitioner annexed a letter from Nyeri Maximum Security Prison that indicates that he has maintained a clean record in prison.
11. The court received a re-sentencing report from the Probation Officer, Kirinyaga County. The report indicates that the petitioner is aged 48 years. That by the time the report was prepared in February 2020 he had been in prison for 16 years. The report recommends a reduced sentence on the ground that his siblings have forgiven him and they are ready to receive him back home. That he was allocated land while he was in prison where his wife and children live. That the local administration is not opposed to his release as he was not a security threat to the community.



12. The evidence that was adduced against the petitioner during his trial is that he picked up a quarrel with his mother. He armed himself with a panga and vowed to kill her. Despite being restrained by relatives he managed to get loose and stormed into the house of his mother where he harked her with the panga. He inflicted multiple deep cuts on her on the neck, head and arms. She succumbed to the injuries. The motive was that his mother had declined to subdivide the family land to him.
13. It is an established principle of law that sentencing is a discretion of the trial court. A sentencing court is obligated to consider all the circumstances of the case before reaching its sentence. In the case of *Vincent Odour Okoth v Republic* [2021] eKLR where the petitioner harked his victim with a panga and killed him in cold blood, Kamau J. substituted the death sentence for murder with 30 years imprisonment.
14. I have considered all the circumstances of the case in this petition. The petitioner has been in incarceration for a period of 18 years. He has shown some remorse for the offence. I however do not think that the period served is sufficient for the gruesome killing of his mother just for refusing to subdivide the family land. A sentence must be proportionate to the offence committed. On the other hand, I do not think that the offence deserves the death penalty. It is my considered view that a sentence of 30 years imprisonment will serve the justice of the case.
15. In the premises the application for resentencing is merited. The death sentence imposed by the trial court is set aside and substituted with 30 years imprisonment. The sentence is to commence from the date of first appearance in court which was on 27th February 2004.

DELIVERED, DATED AND SIGNED AT NYERI THIS 25TH DAY OF MAY 2022.

J. N. NJAGI

JUDGE

In the presence of:

Mr. Mururu for Respondent

Ombongi for Appellant

Court Assistant: Kinyua.

