



**Gichuru v Republic (Miscellaneous Criminal Application 188 of 2019)  
[2022] KEHC 10430 (KLR) (Crim) (23 June 2022) (Resentence)**

Neutral citation: [2022] KEHC 10430 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
MISCELLANEOUS CRIMINAL APPLICATION 188 OF 2019**

**LN MUTENDE, J**

**JUNE 23, 2022**

**BETWEEN**

**VICTOR KENNEDY GICHURU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RESENTENCE**

1. Victor Kennedy Gichuru, the Applicant, was charged and convicted of Murder contrary to Section 203 as read with Section 204 of the *Penal Code*. Following the conviction, he was sentenced by Lessit J. (As she then was) to suffer death on the 14<sup>th</sup> day of June, 2017. Following the decision of *Muruatetu v Republic* (2017) eKLR, a judgment delivered on 14<sup>th</sup> December, 2017; the applicant has petitioned this court for re-sentence.
2. Briefly, evidence adduced was that the deceased was the son of the applicant aged three (3) years. The applicant disagreed with his mother, and they separated. On the fateful date, the applicant went to the shop where the deceased resided with his sibling aged eight (8) years and their mother, he threw a polythene paper that contained petrol inside the shop and set it ablaze, the children were burnt, the deceased succumbed while the sister survived.
3. In mitigation, the applicant expresses remorse. He submits that he has amended his ways, that he has reached out to his wife and daughter who have forgiven him following the reckless act that he committed but they agreed to live separately. That he has undergone counselling, training in mind education and trauma healing amongst other programmes.
4. In response the respondent urges that the applicant has not demonstrated that he is remorseful or rehabilitated as alleged and he must be punished for causing the death of his son. That the daughter



suffered physical harm, she bears scars that will remain throughout her lifetime. It called upon the court to consider imposing life imprisonment.

5. A report filed by the probation officer following a social inquiry conducted revealed that victims have not fully healed. The applicant's wife underwent emotional trauma and his daughter who suffered severe burns bears physical and emotional scars and is discriminated by peers as a result. The question of the applicant being resented made her confused and disoriented.
6. Although the applicant's wife does not object to the applicant being resented, she is apprehensive and did not want the applicant to interfere with their lives.
7. The applicant has been incarcerated for a period of thirteen (13) years. He has adduced evidence of having participated in a mind education training, peer counselling skills, alternative to violence, trauma healing, and thematic Bible Sessions.
9. In the case of *Francis Karioko Muruatetu & Another vs. Republic*, Petition No. 15 of 2015, the Supreme Court stated that:

“(71) To avoid a lacuna, the following guidelines with regard to mitigating factors 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.

10. The Judiciary of Kenya Sentencing Policy Guidelines lists the objectives of sentencing at page 15, paragraph 4.1 as follows:

“Sentences are imposed to meet the following

objectives:

1. Retribution: To punish the offender for his/her criminal conduct in a just manner.
2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
3. Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.
4. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims’,



communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.

5. Community protection: To protect the community by incapacitating the offender.
  6. Denunciation: To communicate the community's condemnation of the criminal conduct.”
11. When the applicant was sentenced to suffer death, the court demonstrated to the public generally the consequences of committing such a heinous crime. The applicant became incapacitated for a period that he has been incarcerated. However, following jurisprudence today, the ultimate form of removing a person from the society is rarely considered. Imprisonment and non-custodial sentences have become the most favoured approach.
  12. The applicant argues that he has reformed. If given a chance he will forge a better tomorrow. A person who is rehabilitated should be given the opportunity to return to the community/society so as to become a productive citizen. Although the applicant availed certificates of participation of the training that he attended, there was no recommendation from the officer in charge of prison to attest to the allegation that he had reformed.
  13. The applicant was a first offender, he is stated to be 51 years old. Although he has sought forgiveness, the probation officer did not seek views of members of his community in his regard. Therefore, this court does not know how he will relate with members of the community.
  14. In the premises, I hereby re-sentence him to serve thirty-five (35) years imprisonment to be effective from the date of arraignment, 12<sup>th</sup> day of June, 2009.
  15. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI, THIS 23RD DAY OF JUNE, 2022.**

**L. N. MUTENDE**

**JUDGE**

**IN THE PRESENCE OF:**

Applicant

Ms. Ntabo for the State

Court Assistant - Mutai

