



REPUBLIC OF KENYA



**KENYA LAW**  
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**Gitamba & another v Republic (Revision Case 412 of 2020)  
[2022] KEHC 14563 (KLR) (27 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14563 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
REVISION CASE 412 OF 2020  
TW CHERERE, J  
OCTOBER 27, 2022**

**BETWEEN**

**JAMES NYAGA GITEMBA ..... 1<sup>ST</sup> APPLICANT**

**VICTOR NTHIGA KIRUTHU ..... 2<sup>ND</sup> APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. On 23<sup>rd</sup> October, 2014, Applicants were sentenced to suffer death for the offence of murder in *Republic v Victor Nthiga Kiruthu & another* [2014] eKLR. Their appeal to the Court of Appeal vide *Victor Nthiga Kiruthu & another v Republic* [2017] eKLR was dismissed on 10<sup>th</sup> October, 2017.
2. Applicants pray for resentence on the grounds that they have served over 10 years, are remorseful and have reformed.
3. The state through Ms.Mwaniki, (PPC) learned counsel for the state submitted that the application for resentence was not opposed.
4. I have considered that the offence the manner in which the offence was executed. The evidence adduced was that 2<sup>nd</sup> Applicant struck first by cutting the deceased on the neck. The 1<sup>st</sup> Applicant cut him next on the shoulder or hand. Then together with others set upon the deceased, cutting him all over the body. He died on the spot.
  1. The post mortem report revealed multiple deep cuts all over the body, the neck completely severed leaving a piece of skin holding it to the body, deep cut on the scalp exposing the skull bone, multiple deep cuts on the right hand, deep cuts on the forearm cutting through the bones, multiple cuts on the lower limbs with three deep cuts on the thigh, knee joint, lateral side and the leg on the right, a deep cut on the left leg at the medial aspect of the ankle joint.



2. The cause of death was severe neck and head injuries secondary to trauma. That deceased died a painful death cannot be underestimated.
3. The Supreme Court decision in *Francis Kariuki Muruatetu & Another v Republic & 5 others* [2016] eKLR declared the mandatory death sentence unconstitutional and this has necessitated resentencing of all persons previously sentenced to the mandatory minimum and maximum sentences.
4. For the foregoing reasons, I find that the Applicant's application for review of the sentence is merited. Accordingly, the mandatory death sentence that was imposed upon the Applicants is reviewed and having considered the viciousness of the attack on the deceased by the Applicants, the sentence is substituted with thirty (30) years imprisonment from the 30<sup>th</sup> October, 2010 when they were sentenced.

**DELIVERED AT MERU THIS 27<sup>TH</sup> DAY OF OCTOBER 2022**

**WAMAE. T. W. CHERERE**

**JUDGE**

Appearances

Court Assistant - Kinoti

Applicants - Present

For Applicants - Mr. Nyenyire Advocate

For the State - Ms. Mwaniki (PPC)

