



**Mwasui v Republic (Miscellaneous Criminal Application 234 of 2019)
[2022] KEHC 16755 (KLR) (Crim) (19 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16755 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS CRIMINAL APPLICATION 234 OF 2019
CW GITHUA, J
DECEMBER 19, 2022**

BETWEEN

VALENTINE MWAWASI MWASUI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The appellant was tried and convicted of the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars were that on the night of 6th and October 7, 2010 at Katani Mlolongo, he murdered Evence Ndizi M'mwanda. Upon his conviction, he was sentenced to death.
2. From the material placed before the court, it is apparent that the applicant was dissatisfied with the conviction and sentence and he preferred an appeal to the Court of Appeal challenging the same. Before the appeal could be heard, the appellant withdrew it but this was after he had filed the instant application before this court for resentencing following the decision the Supreme Court in *Francis Karioko Muruatetu & Another v Republic* [2017] eKLR.
3. The jurisprudence developed by the Supreme Court in the above case is now well settled. The Supreme Court declared the mandatory death sentence for the offence of murder as unconstitutional to the extent that it denied the trial court of its discretion to impose an appropriate sentence after taking into account the personal circumstances of an accused person and the circumstances in which the offence was committed.
4. Besides restoring the trial court's discretion in sentencing in murder cases, the Supreme Court gave all persons who had been sentenced to the mandatory death sentence an opportunity to apply for



resentencing so that their sentences could be reconsidered after taking into account the mitigating and aggravating factors in the case.

5. The court record shows that before passing sentence, the trial court (Hon. Mwilu J as she then was) gave the applicant through his Learned Counsel Ms. Gulenywa an opportunity to mitigate.

In her plea in mitigation on behalf of the applicant, Ms Gulenywa urged the court to consider that the applicant was a first offender; that he was a breadwinner of two children and that he had been in remand custody for a period of 3 years.

6. At the hearing, the application was prosecuted by way of written submissions. In his initial submissions filed on June 16, 2021 and further submissions filed on April 20, 2022, the applicant offered further mitigation and stated that he was now a transformed person after going through several rehabilitation programs in prison which has equipped him with several skills. He attached to his written submissions the certificates acquired after such trainings. The applicant also claimed that he has undergone spiritual teachings which had helped him realize the gravity of the offence he committed for which he was genuinely remorseful; that after spending twelve years in prison, he had understood the need for peaceful co-existence with all persons and he was ready to be integrated back into the society so that he can reunite and continue taking care of his two children.

He urged the court to vary the death sentence imposed on him and substitute it with any other sentence the court finds just taking into account the period he had spent in lawful custody prior to his sentence..

7. The application is not opposed by the State. In her written submissions filed on June 18, 2022, learned prosecuting counsel Ms. Ntabo confirmed that the respondent was not contesting the application but urged the court to consider imposing a deterrent sentence given the applicant's confession of how he had meticulously planned and executed the deceased's gruesome murder. She also urged the court to consider the victims impact statement.

8. During the hearing, the court called for a presentence report which was filed on February 7, 2022. The comprehensive report reproduced the applicant's submissions regarding his rehabilitation in prison and his attitude towards the offence. It also included views of the applicant's family, the community at large and those of the victim's family.

According to the report, the deceased's children and parents are still in shock and are yet to come to terms with the death of their loved one in the hands of the applicant who was their father and son in law respectively. The deceased's parents are especially busier since the applicant has never sought their forgiveness or given them an explanation for having killed their daughter.

9. I have carefully considered the application and the submissions filed by both parties. I have also read the trial court's record. I am mindful of the fact that when introducing resentencing in our jurisprudence, the Supreme Court in the *Francis Karioko Muruatetu case* (*supra*) gave guidelines regarding the factors the court should consider during resentencing.

These are:

- a) The age of the offender
- b) Whether the offender was a first offender
- c) Whether he/she pleaded guilty
- d) The character and record of the offender
- e) Commission of the offence in response to gender based violence.



- f) The circumstances surrounding commission of the offence
 - g) The physical and physiological effect of the offence on the victim's family
 - h) Remorsefulness of the offender
 - i) The possibility of reform and social adaptation of the offender.
 - j) Any other factors the court considers relevant
10. I have considered the fact that the accused is a first offender and that he has expressed what appears to be genuine remorse for the offence he committed. There is evidence that he has undergone reform and rehabilitation in prison which would help in his re-integration into the society. The court record reveals that he has todate served a period of about 9 years in prison.
11. The above mitigating factors must however be weighed against the aggravating factors disclosed in the circumstances in which the offence was committed.
- The evidence shows how applicant carefully planned and ruthlessly executed the murder of his former wife, the mother of his two children who were then of tender years and then singlehandedly dumped her body to conceal the crime.
12. The manner in which the offence was committed depicts the applicant had very little value for human life. As a result of his monstrous and unlawful actions, his children were deprived of the love and care of a mother when they needed it most and it is little wonder that the children and their grandparents are yet to come to terms with the loss of the deceased.
13. I am cognizant of the fact that though rehabilitation and reformation of offenders are key components of the objectives of sentencing, retribution, community protection and denunciation are also other objectives the sentencing of offenders is designed to achieve.
14. After carefully evaluating all the material placed before me and having taken into account all relevant factors, I am satisfied that maintaining the life sentence the applicant is currently serving would not ultimately serve the ends of justice. I am satisfied that the applicant deserves a determinate sentence and I consequently set aside his life sentence and substitute it with a sentence of 30 years imprisonment.
- The sentence shall take effect from October 14, 2010 when the applicant was first arraigned before this court.

It is so ordered.

DATED, SIGNED AND DELIVERED AT KISII THIS 19TH DAY OF DECEMBER 2022.

C.W. GITHUA

JUDGE

In the presence of:

The Applicant

Ms. Adhiambo for the State

Ms. Karwitha Court Assistant

