



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

CRIMINAL PETITION NO.5 OF 2018

KIPROP KERICH EZRA.....PETITIONER

- V E R S U S -

REPUBLIC.....RESPONDENT

RULING ON RESENTENCE HEARING

1. The Petitioner **KIPROP KERICH EZRA** was convicted with the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code and he was sentenced to death on 15/3/2016.
2. The particulars of the charge were that on 12/1/2012 at Mortgage Estate in Kericho District within the Rift Valley Province, the Petitioner murdered **ZEDDY CHEMUTAI**.
3. The Petitioner was charged with a Second Count of attempted suicide Contrary to Section 226 of the Penal Code in that on the same material particulars as in Count 1 (above) the Petitioner attempted to kill himself by stabbing himself on the throat using a kitchen knife.
4. The Prosecution evidence in summary was that the Deceased who was a girlfriend of the Petitioner was a student at African Institute of Research and Development (**AIRD**).
5. On the material day, the Deceased was with **PW.1 (CAROLINE CHEPKURUI) and PW.2 (IDA CHEPTOO)** in a house at Mortgage Estate where they were staying when the Deceased was called by the Petitioner.
6. The Deceased left the house and told PW.1 and PW.2 that she was going to the house of her Uncle Councilor Andrew Soi since the Petitioner was coming to their house and she had disagreed with him.
7. Later, the Petitioner went to the house of **ROBERT CHERUIYOT (PW.3)** who was a brother to the Deceased in the company of the Deceased and PW.3 left them in the house and went to Kabianga University.
8. The Deceased called **PW.1** and **PW.2** and told them she had been stabbed by the Petitioner. **PW.1** and **PW.2** went to **ROBERT CHERUIYOT'S** house and found it locked from inside. They screamed and neighbours gathered. **Robert Cheruiyot** was also called and house was broken into and the body of the Deceased removed from the house. The body had stab wounds on the neck. The Petitioner was also removed from the house and they were taken away in the same vehicle.
9. In his defence, the Petitioner said on the material day he travelled to Kericho from Bomet where he was working as a Security Officer with Smart Guard Security Farm to meet the Deceased who was his girlfriend since she had insisted that he goes to see her so that they could talk.
10. The Petitioner said he met the Deceased with her brother and a friend and her Cousin. He said she escorted them and returned to her brother's house where he locked the door and she demanded to know why he was not picking her phone calls. The Petitioner said the Deceased wanted to know what prostitute he was with and she took a kitchen knife and stabbed him on the throat. He became unconscious and woke up at the Hospital.
11. The Court found the Petitioner guilty as charged and sentenced him to death and held the sentence for the charge of attempted suicide in abeyance.
12. The Petitioner has now filed this Petition seeking sentence re-hearing following the decision in the case of **FRANCIS KARIOKO MURUATETU & ANOTHER -VS-REPUBLIC (2017) eKLR** Supreme Petition No.15 & 16 of 2015 (consolidated) where the Supreme Court held that the mandatory nature of the death penalty is unconstitutional.

13. It stated as follows: ***“Consequently, we find that Section 204 of the Penal Code is inconsistent with the Constitution and invalid to the extent that it provides for the mandatory death sentence for murder. For the avoidance of doubt, this decision does not outlaw the death penalty, which is still applicable as a discretionary maximum punishment.”***

14. The Supreme Court said that the penalty is still lawful in appropriate cases, such as in the case of ***REPUBLIC VERSUS RUTH WANJIKU KAMANDE (2018) eKLR*** where the High Court declined to set aside the death penalty.

15. Justice Lesiit in declining to set aside the death penalty, stated as follows: ***“It is true that pursuant to Muruatetu case, supra the courts now can exercise discretion when considering and passing sentence. It is important to say that in my view that discretion to pass a sentence other than death in capital offences should only be exercised in the deserving cases. I do not find this a deserving case. I think to pass any other sentence than the one prescribed would turn the accused to a hero. I want young people to know that it is not cool to kill your boy or girlfriend. Even where you feel disappointed or frustrated don’t do it. Instead, it is cool to walk away and thereafter forgive”***

16. The Petitioner withdrew his appeal from the Court of appeal and he filed written mitigations in which he stated that he is remorseful for what occurred and he is seeking God’s forgiveness and he is praying for a second chance to correct the wrong and reconstruct his life.

17. He also stated in his submissions that during the time of the commission of the offence, he was young and he did not have previous convictions.

18. He also stated that he had been in custody for 9 years during which period he attained a Certificate in Theology and further, he had been reformed and rehabilitated.

19. The Probation Officer filed a Pre-sentence Report in which he stated that the families of the Deceased and that of the Petitioner are relating well.

20. I have considered the circumstances of this case before the commission of the offence, during the Trial and after the offence was committed.

21. I find that the Petitioner killed the Deceased in cold blood after they had disagreed.

22. PW.2 said the Petitioner wanted to marry the Deceased but she wanted to finish her studies first. The Petitioner said he discovered the Deceased had another boyfriend.

23. I find that the penalty meted upon the Petitioner is deserved taking into consideration the entire circumstances of this case.

24. I find that this petition lacks in merit and I accordingly dismiss it and direct that the Petitioner serves the sentence imposed by the Trial Court.

DELIVERED, DATED AND SIGNED AT KERICHO THIS 22ND DAY OF MARCH, 2021.

A. N. ONGERI

JUDGE