



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**MISCELLANEOUS CRIMINAL APPLICATION NO.335 OF 2018**

**CHARLES MUTHEE KARIUKI.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGEMENT.**

1. The applicant was charged with the murder of the late **DAVID NJOROGE KARANJA** on the night of 9<sup>th</sup> and 10<sup>th</sup> June 1998. After a full trial he was convicted by this court and sentence to suffer death. His appeal to the Court of Appeal was dismissed. The appellant's conviction was later commuted to life imprisonment.
2. Taking advantage of the now famous Supreme Court of Kenya decision in **FRANCIS KARIOKO MURUATETU & ANOTHER VS. REPUBLIC (2017) eKLR** case, the applicant has approached this court seeking that he be allowed to mitigate the sentence.
3. In his application as well as submissions he is not contesting the matter but he is praying that he be allowed to join the rest of Kenyans outside prison walls. He submitted that he has been in custody for the last 22 years which has rehabilitated him and he has learned valuable lifelong lessons.
4. He further submitted that since he was a first offender the court ought to consider his application favourably. He said that the court should take into account the circumstances that led to the commission of the offence.
5. There was no response from the respondent and it is thus left for this court to make the necessary consideration.
6. The court is of course alive to the Muruatetu case and the ripple effect it has had on our jurisprudence landscape. As was stated in that case it was not a *carte blanche* decision so to speak. The courts must consider the gravity of the matter, the circumstances surrounding the offence, the age of the offender, the record of the offender and his remorsefulness among others.
7. The Court of Appeal **THOMAS MWAMBU WENYI VS REPUBLIC (2017) eKLR** on this matter considered the decision of the Supreme Court of India in **ALISTER ANTHONY PEREIRA VS STATE OF MAHARESHTRA** at **paragraph 70-71** where the court held the following on sentencing: -

***“Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. The courts have evolved certain principles: twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstance of each case and the courts must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.”***

8. Considering the circumstances of this case, the 22 years the applicant has served in custody in my view is a commensurate punishment. There is no evidence that he was not a first offender and no other adverse evidence against him was tendered. It is therefore necessary that he be given another chance to pick up the pieces of his life. At the time of the incident he was 25 years and I suppose he could be in his late forties.
9. In the premises the application is hereby allowed, the sentence of life imprisonment is set aside. The appellant is hereby set free unless lawfully held. He shall however serve a one-year probation period from the date of his release at the relevant county probation office.
10. Orders accordingly.

**Dated signed and delivered via video link at Nakuru this 29<sup>th</sup> day of April 2021.**

**H K CHEMITEI**

**JUDGE**