

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

MISCELLANEOUS CRIMINAL APPLICATION NO 90 OF 2018

JOHN MATHARE.....1ST APPLICANT

PETER MATHARE.....2ND APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGEMENT

1. The applicants were charged with the murder of the late **ANN WANJIKU MURUGAMI**. They went through the trial proceedings and were found guilty and convicted to suffer death which was later commuted to life imprisonment.
2. After the advent of the ground breaking decision of the Supreme Court of Kenya in the case of **FRANCIS KARIOKO MURUATEU**, they decided just like many other convicts to try their luck.
3. In their application, the applicants have submitted that they have since reformed and have learn painful lessons and thus they are praying that this court do grant them a second chance. The applicants essentially owned up to their crime and they say that they were first offenders and thus they are praying for a second chance.
4. The learned state counsel submitted that whereas it is true that the court may consider the application, the court ought to consider the circumstances of the case which were to say the least brutal and was unnecessarily uncalled for.
5. The court has perused the application as well as the response by the learned state counsel. It is evident that the deceased met her death brutally for a mere suspicion of practicing witchcraft something which the applicants and their accomplices were unable to prove. Out of rage and anger they simply injured a defenceless woman who was going about her own business.
6. It is clear that the applicants were first offenders and by the time they committed the offence they were young men full of life. Ordinarily they should have hustled for their own lives as well as raise families.
7. In **DALMAS OMBOKO ONGARO V. REP (2016) eKLR** the court stated that

“The principles of sentencing were summarized at page 86 paragraph B of the Judiciary Bench Book for Magistrates in Criminal Proceedings (published by the Kenyan Judiciary in 2004) as follows:

“In determining what is the appropriate sentence to mete out, the Court has to consider such factors as the nature of the offence, the attitude of the accused person, prevalence of the type of offence, the seriousness of the offence, the circumstances under which the offence was committed, the effect of the sentence on the accused person, the fact that the maximum sentence is intended for the worst offenders of the class for which the punishment is provided, etc. (Makanga v R. Criminal Appeal No. 972 of 1983 (unreported)). The Court may also consider the value of the subject matter of the charge (Mathai v R [1983] KLR 442) and whether there has been restitution of the property by the accused (Hezekiah Mwaura Kibe v R [1976] KLR 118).”

The antecedents of an accused person also come into play when the Court is considering the appropriate sentence. If an accused person is a first offender the sentence ought to reflect this fact as the aim of the Court is to encourage reform and discourage recidivism.”

8. The court having read the application as well as the submissions is persuaded to grant the application. The applicants hopefully while in custody will make use of the facilities to equip themselves for the future.
9. The sentence of life imprisonment meted against each of the applicants herein **PETER MATHARE** and **JOHN MATHARE** is hereby set aside and **substituted with 20 years’ imprisonment for each of them with effect from 13th October 2015. Orders accordingly.**

Date signed and delivered via video link at Nakuru this 29th day of April 2021.

H.K. CHEMITEI

JUDGE