



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

MISCELLANEOUS CRIMINAL APPLICATION NUMBER 328 OF 2018

PETER KIPRUTO CHESANI.....APPLICANT

VERSUS

DPPRESPONDENT

R U L I N G

1. Peter Kipruto Chesaina was charged with the **Murder** of Milka Chepkorir **Contrary to Section 203 as read with 204 of the Penal Code.**
2. It was alleged that he committed the offence on 12th December 2012 at Sarambei Area in Nakuru District.
3. He denied the offence and during the trial evidence was led that the deceased was married, but her husband sent her back to her parents due to her drunkenness. The applicant was around the same time, employed as a herder by one of the witnesses. On the material date he is the one who went to his employer with the news that he had killed someone. His clothes were stained with blood. His employer ran to call her neighbour but on return applicant was gone. They went looking for applicant and found him within the neighbourhood. He led them to where the body was. The blood stains on his clothes matched the deceased blood.
4. He was found guilty convicted and sentenced to death.
5. He now seeks a re-sentence, on the strength of the **Francis Karioko Muruatetu Case.**
6. The re-sentencing court's mandate as set out in the case was to consider and evaluate mitigating submissions of the applicant and evaluate the appropriate sentence befitting the offence committed by the petitioner/applicant.
7. Keeping in mind the objectives of sentencing as set out in the **Sentencing Policy Guidelines 2016** at paragraph 4.1 set out thus:
 1. **Retribution:** *To punish the offender for his/her criminal conduct in a just manner.*
 2. **Deterrence:** *To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.*
 3. **Rehabilitation:** *To enable the offender reform from his criminal disposition and become a law abiding person.*
 4. **Restorative justice:** *To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.*
 5. **Community protection:** *To protect the community by incapacitating the offender.*
 6. **Denunciation:** *To communicate the community's condemnation of the criminal conduct."*

The court is expected to take into consideration the following circumstances;

- a. Age of the offender
- b. Being a first offender

- c. Whether offender pleaded guilty
- d. Character and record of the offender
- e. Commission of the offence in response to gender based violence
- f. Remorsefulness of the offender
- g. Possibility of reform and re-adaptation of the offender
- h. Any other relevant factor

8. In the Pre-Sentence Report, the Probation Officer indicated that the victim of the family could not be traced for purposes of a victim impact statement because the applicant had gone to that area to do casual labour work and contacts of that family were not available. It is my view that the officer could have obtained assistance from the police on this one as they would have an idea of where to get the victim's family.

9. I also found it unfortunate that the officer could state in his report that even if the family was traced he would have been challenged because he would not have been able to interview the victim because she is deceased. He ought to be aware that the law envisages that even where the victim has died there those other persons who are rendered victims by virtue of their relationship with the deceased; the secondary victims, whose views may also be considered when rendering sentence. The probation officer is referred to the **Victim Protection Act no. 17 of 2014** s. Section 2 which defines victim and the statement:

"victim" means any natural person who suffers injury, loss or damage as a consequence of an offence; "victim impact statement" means a statement by the victim, or where incapacitated, the victim's representative, on the psychological, emotional, physical, economic or social impact of the offence committed against the victim and includes any recording, summary, transcript or copy thereof;

10. And Section 12 which provides for the stamen.

Victim impact statements (1) A victim of a criminal offence may make a victim impact statement to the court sentencing the person convicted of the offence, in accordance with section 329C of the Criminal Procedure Code (Cap. 75) and that statement may be considered by the court in determining the sentence of the offender.

11. And section 329(C.) of the CPC

When victim impact statements may be received and considered

(1) If it considers it appropriate to do so, a court may receive and consider a victim impact statement at any time after it convicts, but before it sentences, an offender.

(2) If the primary victim has died as a direct result of the offence, the court shall receive a victim impact statement given by a family victim and acknowledge its receipt, and may make any comment on it that the court considers appropriate.

12. That besides, the circumstances of the offence are such that it was the applicant who reported the death of the deceased, and who led people and the police to where the body was. Taking into consideration that he did not come from the area where he committed the offence, and could have just fled, this indicates that he realised he had done wrong and owned up in the first instance.

13. Taking into consideration his mitigation, the circumstances of the offence and the pre-sentence report, I am of the view that his application for resentence is tenable.

14. I have also taken into consideration the period he stayed in custody before he was sentenced.

15. Hence Sentence of death is hereby set aside and substituted with a sentence of fifteen (15) years imprisonment to run from 13th December 2012.

DATED, SIGNED and DELIVERED via ZOOM this 30th Day of June 2021.

MUMBUA T. MATHEKA

JUDGE

In the presence of:-

Court Assistant Edna

Ms Murunga For state

Applicant Present Virtually