



**REPUBLIC OF KENYA**

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

**MISC. CRIMINAL APPLICATION NO. 2 OF 2019.**

**VIVIAN CHEPKEMOI.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGEMENT.**

1. The applicant was convicted of murdering her two years old son, one BK on **9<sup>th</sup> August 2009** contrary to **Section 203 as read with Section 204 of the Penal code**. She was convicted and sentence to life imprisonment. She filed this application just like most of the inmates pursuant to the Supreme Court of Kenya decision in the now famous case of **Francis Muruatetu and Others VS. Republic**.
2. When the matter came up for hearing she told the court that she was abandoning her appeal and pursuing this application in which she is seeking resentencing.
3. The court has perused the entire court proceedings and it is evident that the deceased died a cruel death. The post mortem report is clear on this. Apparently the applicant gave unsworn evidence and nothing much could be gleaned from her evidence in terms of cross examination.
4. The whole issue is now water under the bridge. What is relevant is whether the court should consider her application. Save for the authorities cited by the applicant, namely the one of **Muruatetu** as well as **William Okungu Kittiny vs. Rep (2018) eKLR**, there is not much from her affidavit.
5. The court is however alive to the fact that the applicant at the time of the incident was aged 20 years and obviously a young girl just weaned from teenage. There was no evidence that she was married and had any other child. She was a first offender.
6. Putting all the factors constant and the desire always that once in custody it is expected that one would learn valuable lessons and have a positive change, this court does not find that in the circumstances obtaining after the Supreme Court decision it is efficacious to detain the applicant for life.
7. It is true that she was a first offender and young and the heinous act was done because of societal issues probably. It is noted that she has been in custody from the date she was arraigned in court on August 2009. Hopefully that period has served to teach her lifelong lessons.
8. In the premises, **the life imprisonment is hereby set aside and replaced with a custodial sentence of 20 years from August 2009.**

**DATED SIGNED AND DELIVERED VIA VIDEO LINK THIS 23RD DAY OF JUNE 2021.**

**H. K. CHEMITEI**

**JUDGE**