



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

MISC. CRIMINAL APPLICATION NO. 101 OF 2019

JAMES MAINA KAGORI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant was charged, sentenced and convicted for the murder of one **Joseph Maina Kariuki**. He was sentenced to suffer death on **12th June 2012**.
2. Taking advantage of the Supreme Court of Kenya ground breaking case of **Francis Muruatetu and Others versus Republic** and many other subsequent authorities flowing therefrom, the applicant decided to abandon his appeal and mitigate afresh. In his application filed on **19th November 2020** he prays that the court does consider that he has been in custody for the last 10 years and he has learned valuable lessons.
3. He mitigates that he is very remorseful and as a result of being in prison he has changed and promises to be a good citizen. That he was young person and had a family which depended on him. He apologises to the deceased family. He prays that the court does consider his request and grant him another chance.
4. The learned state counsel while not opposed to the application asked the court to consider that a life was lost and the deceased family lost a father figure. That the sentence ought to be commensurate to the gravity of the offence which in this case was serious.
5. The court has considered the application herein. The court notices that the applicant having abandoned his appeal has left his fate in the hands of this court. It is true that the applicant committed the heinous act and was duly convicted and sentenced. The trial court in its observation may have considered an alternative sentence save that its hands were tied.
6. It is also from the documents availed in court clear that the applicant has been busy in prison honing his skills in other fields with the hope that he may use them one day.
7. The court on the same breath takes into consideration the fact that the applicant killed someone whose family would forever miss him. He as well was not only beneficial to his family but to humanity generally.
8. The court would however consider the decision in **Dalmas Omboko Ongaro versus Republic 2016 eKLR** where the court stated as hereunder on what to consider during sentencing.

“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).”

9. 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.”

10. The court considers that the applicant was a first offender and he has been in custody all through the trial.

11. Taking the above observations, the court hereby sets aside the sentence of death imposed against the applicant and substitute it with a custodial sentence of **Twenty (20) years' imprisonment effective from 8th February 2010.**

12. Orders accordingly.

Dated signed and delivered at Nakuru via video link this 29th day of July 2021.

H. K. CHEMITEI

JUDGE