

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL MISCELLANEOUS APPLICATION NO. 23 OF 2015

ZABLON SHIKUNZI.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant herein was convicted in Kakamega HCCRC No. 7 of 2005, of murder, contrary to section 203, as read with section 204, of the Penal Code, Cap 63, Laws of Kenya, and was sentenced to death. He filed an appeal at the Court of Appeal, being Kisumu CACRA No. 371 of 2012, and the conviction was upheld and sentence confirmed in a judgment delivered on 20th December 2013.
2. The miscellaneous application raises a number issues relating to fair trial, human and constitutional rights abrogations in the course of the trial. The matter went on appeal, and the conviction was affirmed. If the applicant was aggrieved by the decision of the Court of Appeal, he ought to have tried his luck at the Supreme Court. The issues he raises now ought to have been raised on appeal. The only issue that I can take into account is the death penalty that was imposed.
3. There are recent developments in the Kenyan jurisprudence with regard to the mandatory sentence with respect to murder, heralded by the decision of the Supreme Court in *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR (Maraga CJ, Mwilu DCJ, Ojwang, Wanjala, Ndung'u and Lenaola SCJJA). It is on account of that development alone that I can consider review of the sentence that was imposed, the death penalty. In *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR (Maraga CJ, Mwilu DCJ, Ojwang, Wanjala, Ndung'u and Lenaola SCJJA), the same was pronounced to be inhuman and an aberration. The Supreme Court opined that where appropriate the trial court could consider alternative sentences.
4. I note that upon conviction, the applicant mitigated, through counsel. He was said to be remorseful, and had a medical condition, a terminal illness, that was not disclosed. I have noted too the circumstances of the commission of the offence. The murder was committed in the most gruesome manner. The trial court found and held that it had been planned, and it would appear that the intent was to kill more people that night. The applicant was convicted and sentenced on 13th April 2010. He has so far been in prison custody for eleven (11) years.
5. I shall, and hereby, accordingly, following *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR (Maraga CJ, Mwilu DCJ, Ojwang, Wanjala, Ndung'u and Lenaola SCJJA), set aside the death sentence, and substitute it with a sentence of imprisonment for thirty (30) years, to last from his sentencing on 13th April 2010. It is so ordered.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 26TH DAY OF AUGUST, 2021

W MUSYOKA

JUDGE