



**REPUBLIC OF KENYA**

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

**CRIMINAL MISC APP. NO. 135 OF 2019**

**JOHN KARANJA MUNGURA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The applicant was charged with the **offense of murder contrary to Section 203 as read with Section 204 of the Penal Code**. Particulars are that on the nights of 17<sup>th</sup> and 18<sup>th</sup> September 1998 at Engineer Trading Centre in North Kinagop of Nyandarua District within Central Province the applicant jointly with two others who were before court murdered **Benard Wambugu Mbaiti**. The applicant was found guilty and convicted for the offence of murder while the other 2 accused persons were acquitted.
2. The applicant was sentenced to death. The death sentence was commuted to life imprisonment. He stated that on 3<sup>rd</sup> March 2021 when he made this application for resentencing, he had already served 24 years in prison.
3. The applicant has approached this Court pursuant to the Supreme Court decision in **Francis Karioko Muruatetu & Anor vs Republic (2017) eKLR**.
4. He said while in prison he has trained as a barber and a painter. He sought forgiveness. He said at the time he was sentenced he was 30 years old and he is now 58 years old. He said he was not married at the time he committed that offence but his parents are alive.
5. In response, the state counsel urged this court to consider aggravating circumstances and the fact that crude weapons were used to inflict injuries. She urged court to consider the impact of the death on the family of the deceased.
6. I called for social inquiry report. The probation officer filed report dated 30<sup>th</sup> November 2021. I note that the probation officer talked to the deceased's wife who informed him that her late husband left a young family. She stated that she was left with responsibility of taking care of the children. From the report she did not indicate whether she is opposed to the applicant being released nor indicate any fears in the event that he is released. She stated that she is leaving it to God and for the Court to deal with the matter.
7. The report indicate that the community felt the loss of the deceased who was the head teacher deaf school Nyandarua and fear the release might reignite animosity unless the applicant relocate from the area. The family of the applicant believe the 24-year imprisonment has served to change the applicant and indicated that they are ready to assist him relocate from the area to 10 kilometers away from the victims to avoid animosity.
8. From the report, the applicant regrets having committed the offence and the imprisonment has helped him appreciate value of life.
9. The probation officer found the applicant suitable for resentence review.

**ANALYSIS AND DETERMINATION**

10. The Supreme Court directions issued on 6<sup>th</sup> July 2021 in the case **Francis Karioko Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae) [2021] eKLR** states as follows: -

**“Having considered all the foregoing, to obviate further delay and avoid confusion, we now issue these guidelines to assist the Courts below us as follows:**

**The decision of Muruatetu and these guidelines apply only in respect to sentences of murder under Sections 203 and 204 of the Penal Code;**

The Judiciary Sentencing Policy Guidelines to be revised in tandem with the new jurisprudence enunciated in Muruatetu;

All offenders who have been subject to the mandatory death penalty and desire to be heard on sentence will be entitled to a re-sentencing hearing.

Where an appeal is pending before the Court of Appeal, the High Court will entertain an application for re-sentencing upon being satisfied that the appeal has been withdrawn.

In a re-sentencing hearing, the Court must record the prosecutions and the appellant's submissions under Section 329 of the Criminal Procedure Code, as well as those of the victims before deciding on a suitable sentence.

An application for re-sentencing arising from a trial before the High Court can only be entertained by the High Court, which has jurisdiction to do so and *not* the subordinate court."

11. There is no doubt that the applicant victim's family and the community were devastated following the sudden death of the deceased herein. The deceased's young family were subjected to suffering as shown by the probation officers report.

12. I note from the probation officers report that there is willingness on the part of the victim's family to relocate the applicant to prevent any retaliation that arise from the community or victim's family against the applicant.

13. I also note that the applicant took imprisonment positively and used his stay in prison to add value to himself by undertaking trainings that will assist him earn a living if released and he will also be valuable to the community around him.

14. I am of the view that the applicant is suitable for reintegration to the society.

15. **FINAL ORDER**

1) Sentence is reduced to sentence already served.

2) The applicant is hereby released unless lawfully held.

**RULING DATED, SIGNED AND DELIVERED VIA ZOOM AT NAKURU THIS 29TH DAY OF SEPTEMBER, 2021**

.....

**RACHEL NGETICH**

**JUDGE**

**In the presence of:**

Jeniffer- Court Assistant

Applicant in person

Rita for State