



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

MISC CRIMINAL NO. 5 OF 2020

ROSE SERENOI KIPUKEI.....APPLICANT

VERSUS

REPUBLIC.....PROSECUTOR

RULING

1. **Rose Serenoi Kipukei**, the applicant herein was charged with the offense of **murder contrary to section 203** as read together with **section 204 of the penal code**. Particulars were that on 12th February 2009 at Topofi village in Narok District she murdered **Suyanga Kipukei** and **Terian Kipukei**. From the record, the deceased were the children of the applicant.

2. The applicant pleaded not guilty to the charge and the case proceeded for hearing. The applicant was found guilty of murder but she was not convicted and sentenced. She was to be detained in prison at the pleasure of the president.

3. Aggrieved by the judgment she filed an appeal against the trial court's decision. The appeal was dismissed on 12th July 2019 and the decision of the trial court upheld.

4. The applicant was sentenced in the year 2013. She now seeks resentencing.

5. The state opposes the application and states the applicant was disorganized with mental illness at trial and appeal.

ANALYSIS AND DETERMINATION.

6. I have considered the mitigation by the applicant. She stated that she is remorseful and has undergone reform, rehabilitation, and social re-adaptation. She said she is remorseful and the deceased were her only children; that she had mental illness but has now recovered she has been under medication and is reformed. She has trained and acquired skills in knitting. She averred that since her incarceration in 2013, she has had no incidences of breach of the prison rules.

7. The supreme court in directions issued on 6th July 2021 in the case **Francis Karioko Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae) [2021] eKLR** as follows: -

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

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

iii. **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.**

iv. **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of Appeal, the High Court will entertain an application for re-sentencing upon being satisfied that the appeal has been withdrawn.**

v. **In re-sentence hearing, the court must record the prosecution's 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.**

vi. **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.

8. The Nakuru Prisons Service filed a report which state that the applicant has reformed and despite her medical condition trained on knitting, attended counseling sessions due to her mental illness and that she is a churchgoer.

9. The medical report indicates that she was put on medication and her mental illness has greatly improved. The psychiatric report dated 7th July 2021, shows Rose Serenoi has schizophrenia in full remission (stable) and thus fit to join society.

10. The Probation Officer filed a report. It states the accused is 45 years, she has been in prison for 12 years. She is remorseful, her mental status is now stable. Her family is willing and wishes to meet the accused. They are willing to support and supply her with daily drugs. They wish to open a business for her to keep her engaged. It recommends a non-custodial sentence.

11. Taking into account the objectives of sentencing at Paragraph 4 of the **Judiciary Sentencing Policy Guidelines** which are as follows:

“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 offense subsequently as well as to discourage other people from committing similar offenses.

3. Rehabilitation: To enable the offender to reform from his criminal disposition and become a law-abiding person.

4. Restorative justice: To address the needs arising from 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.”

12. The applicant had a mental illness that led her to kill her two children. Losing all her 2 children is the greatest punishment of her life. She has been in prison for 12 years. She is now stable mentally. She has taken the necessary medication and is remorseful of her actions. The Applicant's long stay in custody has given her time to reflect on her action and society must be satisfied that she has been duly punished for the heinous act. In my view, her release will be received well by the community and she will be of use to the community while outside prison.

13. FINAL ORDERS

1. The Applicant is hereby released

2. The applicant is to be under supervision by a probation officer for 3 years.

RULING DATED, SIGNED AND DELIVERED VIA ZOOM AT NAKURU THIS 27TH DAY OF OCTOBER, 2021

.....

RACHEL NGETICH

JUDGE

In the presence of:

Jenifer - Court Assistant

Applicant present in person

Ms.Rita Rotich for state.