



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

CRIMINAL PETITION NO 49 OF 2020

CHRISPINE OKOTH OWISO.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

1. The Petitioner was tried and convicted of the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code on 3rd December 2010. He was sentenced to life imprisonment on 19th December 2011.
2. Being dissatisfied with the said decision, he lodged an appeal in the Court of Appeal **Criminal Appeal No 13 of 2011** where his appeal was dismissed in its entirety.
3. On 17th July 2020, he filed an application for review of the sentence. In his affidavit that he swore in support of his application, he stated that he had undergone several rehabilitation and reformation programs such as K.C.P.E, K.C.S.E, Industrial Technology, Health Education and Biblical Studies which would enable him integrate well back to society. He added that in prison he had maintained high standards of discipline.
4. He contended that he was arrested at the age of twenty-eight (28) years and was at the time the sole bread winner of his family of two (2) children. He was categorical that he had so far spent fourteen (14) years in custody and pleaded with the court to consider granting him an opportunity of shaping up his future which otherwise would be ruined by the long incarceration. He added that he was a first offender and was remorseful of the events that led to the death of the deceased.
5. On its part, the State opposed his Petition for review of sentence. It argued that the deceased was the Petitioner's wife of six (6) years and that they had been blessed with two (2) children. It contended that the deceased died in a gory manner in that he doused her in petrol and set her on fire. It was categorical that the murder was premeditated as when she burnt and cried for help, he was the only person in the locked house who could have helped her, but he chose to do nothing even as other people did all they could to try to save her.
6. It was its contention that sentencing is at the discretion of the court. To buttress its point, it relied on the case of **Ambani vs Republic (1990) KLR 161** where the court therein stated that a sentence imposed on an accused person must be commensurate with the moral blameworthiness of the offender and that the court should look at the facts and the circumstances of the case in its entirety before settling for any given sentence.
7. It further pointed out that the Petitioner was sentenced to life imprisonment which was a lawful and lenient sentence considering the facts of the case. It added that he was not given a mandatory death sentence as considered in the decision in **Francis Karioko Muruatetu & Another vs Republic**. It urged the court to dismiss the Petition for review and uphold the life sentence.
8. On 6th July 2021, the Supreme Court gave guidelines in the case of **Francis Karioko Muruatetu & Another vs Republic** (Supra) to the effect that the decision of Muruatetu and these guidelines apply only in respect to sentences of murder under Sections 203 and 204 of the Penal Code. It also clarified that all offenders who had been subject to the mandatory death penalty and desired to be heard on sentence would be entitled to re-sentencing hearing.
9. The Supreme Court was categorical that an application for re-sentencing arising from a trial before the High Court could only be entertained by the High Court, which has jurisdiction to do so and not the subordinate court. It was also emphatic that where an appeal was pending before the Court of Appeal, the High Court would entertain an application for re-sentencing upon being satisfied that the appeal had been withdrawn.

10. It further directed that in a re-sentencing 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 the suitable sentence. It added that where the appellant has lodged an appeal against sentence alone, the appellate court would proceed to receive submissions on re-sentencing.

11. It clarified that the guidelines would be followed by the High Court and the Court of Appeal in ongoing murder trials and appeals and that the same would also apply to sentences imposed under Section 204 of the Penal Code before the decision in Muruatetu.

12. It reiterated that in re-hearing the sentence for the charge of murder, the court had to take into account the mitigating factors that had earlier been set out in the same case of **Francis Karioko Muruatetu & Another vs Republic** (Supra). It further directed that the Judiciary Sentencing Policy Guidelines to be revised in tandem with the new jurisprudence enunciated in the said case.

13. This court considered the rehabilitation programmes that the Petitioner had undergone while in prison. However, his Petition was not one that this court could grant. Firstly, he was not sentenced to death. He was sentenced to life imprisonment. This therefore rendered the case of **Francis Karioko Muruatetu and Another vs Republic** (Supra) that addressed the constitutionality of mandatory death sentence irrelevant in the circumstances of the case. Secondly, the Court of Appeal upheld the sentence of life imprisonment and this court had no power to overturn the said decision being a court lower in hierarchy to the Court of Appeal.

14. Notably, whereas the Constitution of Kenya, 2010 does not specifically provide that the decisions of the Court of Appeal are binding on the High Court, Environment and Land Court, Employment and Labour Relations Court, Magistrates' courts, Kadhis' courts and all tribunals like that in Article 163(7) of the Constitution of Kenya, the common law doctrine that decisions of higher courts are binding on courts below it, apply.

15. Having said so, it is clear from Article 165 (6) of the Constitution of Kenya, 2010 that the High Court has no supervisory role over the courts superior to it. The said Article 165(6) of the Constitution of Kenya provides that:-

“The High Court has supervisory jurisdiction over subordinate courts and over any person, body or authority exercising judicial or quasi judicial function but not over a superior court.”

DISPOSITION

16. For the foregoing reasons, the upshot of this court's decision was that the Petitioners' Petition for review of the sentence that was filed on 17th July 2020 was not merited and the same be and is hereby dismissed. Accordingly, the Petitioner's conviction and sentence for the offence of murder be and is hereby upheld.

17. It is so ordered.

DATED and DELIVERED at KISUMU this 25th day of October 2021

J. KAMAU

JUDGE