



**Ali v Prosecutions (Constitutional Petition E015 of 2021)
[2021] KEHC 273 (KLR) (26 November 2021) (Judgment)**

Neutral citation: [2021] KEHC 273 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CONSTITUTIONAL PETITION E015 OF 2021
JM MATIVO, J
NOVEMBER 26, 2021**

BETWEEN

AMER MUKTAR ALI PETITIONER

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS RESPONDENT

JUDGMENT

1. Sentencing is an important task in the matters of crime. Sentencing is a discretion of the court and the court must exercise the discretion judiciously and not capriciously (See *Shadrack K. Kogo vs Republic*). One of the prime objectives of Criminal Law is the imposition of an adequate, appropriate, just and proportionate sentence commensurate with the crime and the manner in which the crime was committed.
2. There is no straight forward formula for sentencing an accused person upon proof of crime. What sentence would meet the ends of justice depends on the facts and the circumstances of each case and the court must keep the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances in mind. While exercising its discretion in sentencing, the court should bear in mind the principles of proportionality, deterrence and rehabilitation and as part of the proportionality analysis, mitigating and aggravating factors should be considered.
3. It is also important to mention that traditionally an accused person was treated as the most favourable child of the Law under the common Law. However, the emergence of transformative constitutions changed the legal landscape such that today victims of the crime and the persons likely to be affected by the offence are accorded a hearing.
4. The Laws is not static the accused person was sentenced to suffer death. The penalty prescribed by the law then was mandatory. Since their conviction, a lot of water has gone under the bridge and in many jurisdictions worldwide, the dealt penalty has been abolished. As if taking cue from the worldwide



trend, the Apex Court made a classis determination in the Muruatetu case effectively abolishing the death penalty.

5. The Petitioners are now before me for resentencing on the strength of the SC decision. I have carefully read the reports prepared by the Probation officer. I also note that the deceased wife wife was involved in the process and she is in court today. She has confirmed that they had discussions and the two families have forgiven each other.
6. Taking into account the principles of sentencing discussed earlier and the said reports and noting that the petitioners are remorseful and then the society is ready and willing to welcome them back, I find and hold that it would be in the interests of justice to give the Petitioners another chance to restart their lives.
7. Accordingly I reduce, the penalty of death imposed upon the Petitioners to the period already served in jail and order that the two Petitioners, Mr Issa Dual Gure and Mr.Amer Muktar Ali be released from prison forthwith unless otherwise lawfully held.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 26TH NOVEMBER 2021

JOHN M. MATIVO

JUDGE

