



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU

CRIMINAL MISC APP. NO. 80 OF 2019

DANIEL GITAU MAINA.....APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

1. The applicant was charged with the **offense of murder contrary to Section 203 as read with Section 204 of the Penal Code** and was sentenced to **death** by the High Court in Nakuru in the year 2014 which sentence was commuted to life imprisonment.
2. The applicant has approached this Court pursuant to the Supreme Court decision in **Francis Karioko Muruatetu & Anor vs Republic (2017) eKLR**.
3. The application came for hearing on 20th July 2021, and a recommendation report dated 7th July 2021 was filed in Court in favor of the petitioner.
4. In his submissions, the applicant stated that he was charged with the offense of murder in the year 2008 and sentenced in 2014, having spent 12 years in custody his health has deteriorated, and pleaded the Court in reconsidering the resentence to factor in the time spent in custody. He cited the case of **Wilson Kibor Vs Republic (2009) eKLR**.

ANALYSIS AND DETERMINATION

5. The Supreme Court directions issued on 6th 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of Appeal, the High Court will entertain an application for re-sentencing upon being satisfied that the appeal has been withdrawn.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.”

6. The applicant's incarceration has served the purpose of which a sentence is imposed thus it is not necessary to continue holding the applicant in incarceration any longer.

7. Taking into consideration the time spent in prison, I opine that he has paid his debt to society. I am thus inclined to find in his favor the application for a reduced sentence and proceed to issue a favorable term of the sentence.

8. The officer in charge of Kisumu Maximum Prison vides a recommendation dated 7th July 2021 has recommended that the applicant is of good conduct in prison and has not been charged for any offenses against prison discipline.

9. It is the Applicant's testimony that his health has deteriorated when in custody to an extent of having clutches to aid in his walking capability. In the circumstances and looking at the seriousness of the offense the applicant is sentenced to 15 years imprisonment.

10. FINAL ORDER

1) **The death sentence commuted to life imprisonment be set aside.**

2) **The applicants be sentenced to 15 years imprisonment from the the date of sentencing.**

RULING DATED, SIGNED AND DELIVERED VIA ZOOM AT NAKURU THIS 17TH DAY OF DECEMBER, 2021

.....

RACHEL NGETICH

JUDGE

In the presence of:

Miruka - Court Assistant

Applicant in person

Rita for State