

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

PETITION NO. 93 OF 2018

SABINA MUTHONIPETITIONER

VERSUS

REPUBLICRESPONDENT

RULING ON RE-SENTENSING

1. The petitioner, **Sabina Muthoni**, was convicted and sentenced to death for murder contrary to *section 203 as read with section 204 of the Penal Code*. It was alleged that on 25/5/2011 at Thaene Village, Kithetu Location in Igembe South District within Meru County, the petitioner jointly with another murdered **Paul Mwenda Mugambi Alias Chomelea**.

2. Being aggrieved by that decision, the petitioner appealed to the Court of Appeal which appeal was dismissed on 22/11/2017.

3. Vide her Motion on Notice dated 15/5/2019, the petitioner petitioned this Court to review her sentence on the basis of the Supreme Court's decision in the case of **Francis Muruatetu and Others vs Republic [2017] eKLR**.

4. In that case, the Supreme Court of Kenya held that the mandatory nature of the death sentence was unconstitutional as it denied the Court its discretion in sentencing. The Court proceeded to set out the criteria or the principles that should guide a Court in sentencing. Some of the considerations are age of the offender, being a first offender, whether the offender pleaded guilty, the character and record of the offender, commission of the offence in response to gender-based violence, remorsefulness of the offender, the possibility of reform and social re-adaptation of the offender and any other factor that the Court considers relevant.

5. I have considered the foregoing and the circumstances under which the offence was committed. The petitioner with others set upon the deceased with a panga and iron bars for allegedly taking illicit brew of Kshs.40/- and producing a Kshs.1,000/- in settlement therefor. The beatings went on until half past mid-night whereby the deceased died later on in hospital that night. He died a slow and painful death at the hands of the petitioner and her accomplices.

6. The state urged that the death sentence be maintained or in the alternative it be substituted with a 25 year sentence. In her mitigation, the petitioner stated that she is a 1st offender. She is remorseful, rehabilitated and is now saved. The Prison authorities gave a positive report about her.

7. Taking into consideration the facts of the case and how the petitioner committed the offence as well as the mitigation, I set aside the death sentence and substitute therefor with a sentence of 25 years imprisonment. The sentence shall run from the date the petitioner was first sentenced, that is, 14/11/2014.

DATED and DELIVERED at Meru this 30th day of January, 2020.

A. MABEYA

JUDGE