

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

PETITION NO. 138 OF 2018

DAVID KIMATHI NDATHO..... PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

RULING ON RE-SENTENSING

1. The petitioner, **David Kimathi Ndatho**, 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 22/7/2005 at Kaukene Village in Igembe South District within the then Eastern Province, the appellant murdered **HMK (deceased)**.
2. Being aggrieved by that decision, the petitioner appealed to the Court of Appeal which appeal was dismissed on 18/7/2016.
3. Vide his Motion on Notice dated 22/5/2018, the petitioner petitioned for the review his 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 accosted the deceased and struck him with a thick piece of timber on the head inflicting on him serious injuries from which he succumbed a day later.
6. The state urged that the death sentence be retained. In his mitigation, the petitioner stated that he committed the offence when he was young and taking drugs. That he has since stopped taking drugs and he is a changed person. That he has been seeking reconciliation with the family of the deceased who was his friend.
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 a sentence of imprisonment for 25 years. The sentence shall run from the date the petitioner was first sentenced, that is, 15/12/2011.

DATED and DELIVERED at Meru this 29th day of January, 2020.

A. MABEYA

JUDGE