



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

MISC. CRIMINAL APPLICATION NO. 132 OF 2018

KAREN CHEPKORIR KOECH.....APPELLANT

VERSUS

REPUBLIC.....STATE

JUDGMENT UPON APPLICATION FOR RE-SENTENCING

1. The Applicant, Karen Chepkorir Koech, was a very young woman around December, 2010. She had hardly reached the age of majority. She was also a woman in love. The object of her affection was David Kiplagat, a farmer in the Tachasis Village of Kuresoi Sub-County. The two were, depending on who one asked, either husband and wife according to the Applicant; or boyfriend and girlfriend according to David Kiplagat.
2. Unfortunately for the Applicant, David Kiplagat had his eye on a second woman; Neemah Chelangat. The dalliance between David Kiplagat and Neemah Chelangat caused turmoil in the love relationship between David and the Applicant. The Applicant's response to that social problem would land her in prison – with a death sentence to her name.
3. On 29/12/2010, the Applicant confronted Neemah Chelangat as she was walking home in the company of others. The Applicant suddenly threatened to stab Neemah with a knife. Then she stabbed Neemah with a knife she pulled from her clothes. Neemah was rushed to the hospital on a motorcycle but, unfortunately, she died on her way there.
4. In a judgment dated 20/03/2017, the Learned Maureen Odero J. found the Applicant guilty and sentenced her to death as the law, then, mandatorily required.
5. The Applicants now seek to be resentenced pursuant to the Supreme Court decision in *Francis Karioko Muruatetu & Another v Republic [2017] eKLR*. They seek for substitution of the death penalty they received with a prison term. In the *Muruatetu Case*, the Supreme Court outlawed mandatory death penalty for murder as unconstitutional and struck down section 204 of the Penal Code to the extent that it prescribed mandatory death sentence upon conviction for murder.
6. In *Benson Ochieng & Another v Republic (Nakuru High Court Misc. Application No. 45 of 2018)*, I reached the conclusion that the High Court can invoke its original jurisdiction bequeathed to it in Article 165(3)(a) of the Constitution to re-sentence persons on death row who were sentenced pursuant to the mandatory death penalty provisions which have been declared unconstitutional.
7. To determine whether the Application is meritorious and to what extent, the Court must look at the circumstances surrounding the commission of the offence, the circumstances related to the victims of the offence as well as the circumstances related to the Applicant herself.
8. Ms. Rotich, the Prosecutor, conceded that this case does not deserve the death sentence and urged the Court to substitute it with a prison term. She was, however, of the view that the offence should attract a very stiff sentence since the Applicant used an offensive weapon, a knife, to attack an unarmed person.
9. On her part, the Applicant urged the Court to treat her with leniency and consider the term served as sufficient. She said that she now accepts her mistake. She conceded that she killed Neemah due to her "love" for her boyfriend. She insisted that Neemah attacked her saying that David Kiplagat was her husband and that she instinctively took out a knife and stabbed her. She says she did not intend to kill Neemah and that she is very remorseful. She states that she has gone through a lot of counselling and training in anger management in Prison and that if given a second chance she will not repeat the offence.
10. The Applicant also stated that she is now fully reformed. She produced certificates in baking and pastry as proof of this. She also produced a recommendation letter from Prison authorities. The letter speaks of the Applicant in really glowing terms and asserts that she is

fully rehabilitated and ready for life outside Prison.

11. A Social Inquiry Report filed by the Probation Department at the Court's request is equally favourable for the Applicant. It describes the Applicant in positive terms and concludes that she has good potential and capacity to live a productive life outside Prison.

12. All considered, I agree with the assessment by the Probation Officer. There are many mitigating circumstances in this case. The most important one is the fact that the Applicant was barely an adult when the incident happened. She has shown remorse and great capacity to reform. The extenuating circumstances in powerfully indicate that the sentencing objectives in this case have already been achieved. There are no further sentencing objectives to be achieved through the continued incarceration of the Applicant.

13. Consequently, I hereby substitute the death sentence imposed on the Applicant with term sentence of imprisonment equal to the term already served plus a Probationary period of three years. The Applicant shall, therefore, be released from Prison forthwith unless otherwise lawfully held. She shall, then, be on Probation for a period of three years.

14. Orders accordingly.

Dated and delivered at Nakuru this 27th day of February, 2020

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JOEL NGUGI

JUDGE