



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

MISC. APPLICATION NO. 25 OF 2019

IBRAHIM MURUMBA WALUKHU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Applicant, **IBRAHIM MURUMBA WALUKHU**, was charged, convicted and sentenced to death for the offence of murder contrary to **section 202** as read with **section 203** of the *Penal Code (Chapter 63 of the Laws of Kenya)* at a trial before the High Court at Kitale in *Criminal Case No. 12 of 2006*. He filed this application seeking for re sentencing in view of the recent case **Francis Karioko Muruatetu & Another =Vs= Republic [2017] eKLR**

2. In the plea before this court, the petitioner told the court that he had been in prison for almost 11 years and that he had reformed. He further stated that he has been in custody since 2006 and has rehabilitated and has done various courses including carpentry Grade 1, biblical studies and football skills. He attached certificates which show that he has indeed done the said courses.

3. I wish to emphasise that the petition is one for resentencing. The petitioner has already had the benefit of his death sentence commuted to life imprisonment by His Excellency the President under the Power of Mercy conferred under **Article 133** of the Constitution. In this case, the court is being called upon to re-consider the facts as they existed at the time of sentencing and impose an appropriate sentence in light of the fact that the mandatory death penalty has been declared unconstitutional.

4. The *Sentencing Policy Guidelines, 2016* (“the *Guidelines*”) published by the Kenya Judiciary state (at para. 4.1) that the sentence imposed must meet the following objectives;

- **Retribution;** To punish the offender for his/her criminal conduct in a just manner.
- **Deterrence;** To deter the offender from committing a similar offence subsequently as well as discourage other people from committing similar offences.
- **Rehabilitation:** To enable the offender reform from his criminal disposition and become a law abiding person.
- **Restorative justice:** To address the needs arising from criminal conduct such as loss and damages.
- **Community protection:** To protect the community by incapacitating the offender.
- **Denunciation:** To communicate the community’s condemnation of the criminal conduct.

5. As the *Guidelines* (para. 4.2) state, “*These objectives are not mutually exclusive, although there are instances in which they may be in conflict with each other. As much as possible, sentences imposed should be geared towards meeting the above objectives in totality.*”

6. The *Guidelines* provide a four tier methodology for determination of a custodial sentence. The starting point is establishing the custodial sentence under the applicable statute. Second, consider the mitigating circumstances or circumstances that would lessen the term of the custodial sentence. Third, aggravating circumstances will go to increase the sentence. Fifth, weigh both aggravating and mitigating circumstances. Since the Guidelines did not take into account the fact the death penalty would be declared unconstitutional, the Court in the *Muruatetu Case (Supra at para. 71)*, considered that in re-sentencing in a case of murder, the following mitigating factors would be

applicable;

- (a) age of the offender;
- (b) being a first offender;
- (c) whether the offender pleaded guilty;
- (d) character and record of the offender;
- (e) commission of the offence in response to gender-based violence;
- (f) remorsefulness of the offender;
- (g) the possibility of reform and social re-adaptation of the offender;
- (h) any other factor that the Court considers relevant.

7. In determining this petition, it is imperative to look at the sentences which have been imposed by other Courts following the decision in the Muruatetu case in offences of this nature. The Court of Appeal decision post the Muruatetu Case provide some guidance on the appropriate sentence. In **Jonathan Lemiso Ole Keni v Republic NRB Criminal Appeal No.51 of 2016 (2018) eKLR** where the petitioner shot a person without any provocation, the court imposed a sentence of 30 years' imprisonment. In **John Ndede Ochodho alias Obago v Republic KSM CA Criminal Appeal No. 120 of 2014 (2018) eKLR**, the Court of Appeal upheld a sentence of 25 years in a case of murder where the petitioner assaulted the deceased several times causing his death.

8. From the record, the petitioner was a first offender. I note that petitioner was in pre-trial custody from 2006 when he was charged upto the time he was convicted and sentence in 2008, a period of 2 years. The court is entitled to take this period into consideration under **section 333(2)** of the **Criminal Procedure Code (Chapter 75 of the Laws of Kenya)**.

9. I have taken into account what I have stated. I hereby re-sentence the Petitioner to Twenty (**20**) years commencing the date of sentence in before the trial court that is from **16/10/2008**.

Signed, Dated and delivered at Kitale on this 5th day of March, 2020.

H.K. CHEMITEI

JUDGE

5/3/2020

In the presence of:-

Ms Kagali for the Respondent

Applicant – present

Court Assisytant – Kirong

Ruling read in open court