



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**MISC. CRIMINAL APPL. 204 OF 2018**

**STEPHEN NJENGA WANJIRU.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The Appellant was charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars were that on the 27<sup>th</sup> of July, 2010 at Ruku market in Kiambu within Kiambu County he murdered Florence Wanjiru Gichango.
2. He was convicted and sentenced to suffer death. He appealed the decision and the Court of Appeal upheld both the conviction and sentence. This would have been the end of his road save for the window opened by the Supreme Court decision in the case **Francis Kariokor Muruatetu and Another v Republic (2017) eKLR**. He has thus approached this court seeking a resentencing. The Applicant was in person whilst the Respondent was represented by learned State Counsel, Miss Chege.
3. In the probation officer's report dated 28<sup>th</sup> January, 2020 the Applicant admitted to killing the deceased but stated that he did not intend to. He recounted his defense. He stated that he hosted the deceased against his desire. However, while asleep he heard commotion in the living room. He found that the deceased, who had been drunk when she came to the house, was vandalizing the electronics in his house. He forced her out of his house. When she demanded to be given her clothes back, he threw them to her and the clothes fell near a well. She went to collect them and fell into the well.
4. However, the prosecution's evidence was that the Applicant pushed the deceased who fell back and landed in the well. The Applicant ran away and left the witnesses calling for help. The man who dug the well came and retrieved the woman who had fallen in. She was already dead. The investigating officer testified that the house was a mess akin to having been the scene of a struggle as the mattress, radio and clothes suspected to belong to the Applicant and deceased were scattered on the floor.
5. It was peculiar both to the trial and appellate court of the Applicant's actions after the incident. The trial court was convinced that his conduct after the deceased fell into the well demonstrated malice aforethought. The Court of Appeal, as well, made a note that while the incident happened on 26<sup>th</sup> July, 2010 in Kikuyu, the Applicant was arrested on 3<sup>rd</sup> October, 2010 in Mai Mahiu. It observed thus:  
  
*"...A faraway place and 2 months later...were not consistent with the conduct of a person who had brought about the death of another by accident." (emphasis added).*
6. The Respondent in submission made a case for two things, the conviction and sentence. As to the conviction, Miss Chege submitted that the Applicant was indeed determined to kill the Applicant as he shoved the deceased until she fell into a well where she met her death, therefore the conviction was sound. On sentence, she urged that the sentence was sound. She however had no objection to the court substituting the death sentence with twenty (20) years imprisonment.
7. The circumstances of the offence demonstrate that the Applicant clearly intended to kill the deceased. The Applicant was heartless and despite feigning an accident the defense was at best a sham. It is clear that he was fully aware of the danger that lingered as he pushed the deceased and therefore simply excusing an act of shoving does not negate the murderous intent.
8. Nevertheless, he expresses remorse and prays that this court be lenient. He has earned certificates in the various life skills he has gained in prison and has a letter of recommendation from the prison vouching for his good behavior. These are, therefore, factors that I shall consider in determining the appropriate sentence.
9. The **Francis Muruatetu** decision underscores that the death penalty under **Section 204 of the Penal Code** should only be handed down in

aggravated cases.

10. The sentencing objectives as set out under the Judiciary Sentencing Guidelines ought to be adhered to in considering the most suitable sentence to impose. Those relevant to this case are deterrence, retribution, community protection, denunciation and rehabilitation. These objectives should be met in proportion to the circumstances of the offence.

11. In relation to this case, the Applicant killed the deceased with a measure of ruthlessness. It is also well demonstrated that he has rehabilitated and that the community is safe to receive him back. However, the objectives of deterrence and denunciation must be remedied.

12. In the result, applying a balancing measure of all these factors, I set aside the death sentence and substitute it with twenty-five (25) years imprisonment to commence from 3/10/2010, the date of his arrest. It is so ordered.

**Dated and Delivered at Nairobi This 29<sup>th</sup> Day of April, 2020.**

**G.W.NGENYE-MACHARIA**

**JUDGE**

**In the presence of:**

1. Applicant in person.
2. Miss Nyauncho for the Respondent.