

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARISSA

CRIMINAL MISC. APPLICATION NO. 67 OF 2019

NGALU KAVITA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant was convicted and sentenced to death in a charge of murder on 20/12/2018. He says that he never lodged an appeal to the court of appeal.
2. He has now moved this court for re-sentencing. The applicant relied on case of Supreme Court **Francis Karioko Muruatetu & Another =Vs= Republic [2017] eKLR**.
3. The essence of the **Muruatetu** case was that death sentence is not illegal but only mandatory aspect which may make trial court not to consider mitigation as tendered. The Supreme Court in the **Muruatetu** case (Supra) held that although the mandatory death penalty having been declared unconstitutional, the death penalty still exists as the maximum sentence for murder under Section 203 and 204 of the Penal Code.
4. In the instant case the trial court was alive to the holding in the aforesaid **Muruateru** case which had been decided on 17/12/2017. This is apparent as the trial court considered mitigations thus held, ***“I have considered that accused was a first offender, was in custody for 6 years and a sole breadwinner. However, the deceased (his wife) was defenseless. The attach was very vicious with her having been stabbed several times.”*** Thus, the court found it would award a maximum sentence which is death.
5. The **Muruatetu** case did not outlaw death sentence but retained it as maximum sentence. The circumstances the award of death penalty by my brother **Dulu J** can only be challenged in the Court of Appeal.
6. **Thus, application lacks merit and is dismissed.**

DATED, DELIVERED AND SIGNED AT GARISSA THIS 27TH DAY OF MAY, 2020.

C. KARIUKI

JUDGE