



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CRIMINAL DIVISION

HIGH COURT MISC.APPLICATION NO.23 OF 2018

(IN THE MATTER OF HIGH COURT CRIMINAL CASE NO.24 OF 2000 AT NYERI)

BEATRICE WANJIRU KINYUA.....APPLICANT

VERSUS

REPUBLICRESPONDENT

JUDGMENT

1. A brief outline of the case was that the applicant **Beatrice Wanjiru Kinyua** was charged with the offence of murder c/s 203 as read with section 204 of the Penal Code; the particulars of the offence are that on the 21st day of June, 1999 at Kirogo Village in Kirinyaga the applicant murdered Rose Wakuthi Muriuki.

2. The applicant was convicted and was sentenced accordingly for murder; the provisions of Section 204 of the Penal Code imposes a mandatory death sentence for the offence of murder; being aggrieved with the Honourable Judge's decision the applicant lodged an appeal in the Court of Appeal **vide CR. APP. No.60 of 2014** which appeal was dismissed; the court upheld the trial court's decision and found that the applicant was properly convicted and found no reason to interfere with the conviction and sentence;

3. The applicant being aggrieved with this decision and having exhausted all the processes of appeal has now petitioned this court for resentencing under the guidelines made by the Supreme Court in the **Francis Karioko Muruatetu vs Republic (2017) eKLR** case; in this instant application the applicant is seeking the following prayers;

i. This honorable court be pleased to grant an order for re-sentencing and to receive mitigation from the applicant; to consider an appropriate sentence and any other order it may deem fit to grant in the interest of justice;

4. At the hearing hereof the applicant was unrepresented and relied on the filed written submissions; whereas the respondent was represented by Prosecuting Counsel Ms Gicheha who made oral submissions; hereunder are the parties respective submissions;

APPLICANT'S CASE

5. The application is for review of sentence under the guidelines set down in the **Muruatetu** (supra) case; the court to consider the circumstances surrounding the commission of the offence; the circumstances surrounding the offender; and the circumstances surrounding the victim;

6. That the resentencing court has been given wide discretion and it ought to take into consideration the following mitigating factors; that the applicant was a first offender; the reconciliation and reparation efforts she had attempted with the family of the deceased; her remorsefulness and rehabilitation whilst serving the sentence; and also to take into consideration her age and health;

7. To support her prayer for re-sentencing the applicant relied on the Probation Report which she contends is extremely favourable; and has also annexed certificates to demonstrate that she was a model prisoner;

8. The court to take into account the fact that the applicant was a first offender and a model prisoner and has shown remorse for her deeds; and the applicant prayed that balancing mercy and justice her custodial sentence be reviewed;

RESPONDENT's CASE

9. In response Counsel submitted that the Probation Report was not favorable and that it was apparent there from that the victim's family still had tension and bitterness towards the applicant as her family had not honored the compensation agreement; but was not opposed to the prayer for the review and reduction of the sentence; and the period spent in custody during the trial ought to be considered.

ISSUES FOR DETERMINATION

10. After hearing the rival submissions this court has framed only issue for determination is as follows;

- i. Whether to review the sentence imposed by the trial court; the commencement date of the sentence;

ANALYSIS

11. The Supreme Court declared the mandatory death sentence to be unconstitutional and persons so convicted were at liberty and entitled to petition the trial court for re-sentencing; in line with the decision the trial court has the mandate to grant alternate sentences after taking into consideration mitigating factors;

12. In the Muruatetu (supra) case the Supreme Court gave guidelines with regard to mitigating factors; these include but are not limited to;

- i. Age of the offender;
- ii. Being a first offender;
- iii. Commission of the offence in response to gender based violence;
- iv. Remorsefulness of the offender;
- v. Character and record of the offender; and the possibility of reform and social adaptation of the offender.
- vi. Any other factors the court considers relevant.

13. The mitigating circumstances in the applicant's favour are that she was relatively young when she committed the offence; she was a first offender; and the Report from the prison demonstrates that she has reformed and is a model prisoner;

14. However, there are grave aggravating circumstances that work against the applicant; one being the circumstances and the manner in which the offence was committed and the other the social adaptation of the applicant with her in-laws;

15. These aggravating factors that this court has taken into consideration are broken down as follows;

- i. The murder committed was brutal, cruel, grossly inhuman and was motivated by revenge against an innocent and defenseless minor; the applicant being a first wife had believed that her sister in law was responsible for her husband building a stone house for her co-wife; this bad blood led the applicant to fatally harm a defenseless nine (9) year old minor whose only crime was that she was the daughter of the sister in law whom the applicant believed was the cause of her misery;
- ii. The crime was premeditated; the applicant had gone to her sister in law's house armed and ready to commit the offence; she found the young girl there and thinking no one was in sight attacked and harmed the young child;
- iii. The choice of weapon; a knife was used to snuff out the life of the child; the evidence adduced by a prosecution witness was that the applicant held the minor's mouth and stabbed her severally; the post mortem report evidence indicated that the deceased was stabbed severally on the left side of the neck, the shoulder blade and on the back of the neck;

16. The murder was extremely brutal, cruel and heinous and the applicant driven by hate and revenge was merciless; the manner the offence was committed is found to be a very serious aggravating circumstance; as there are no mitigating factors of the offence this calls for a deterrent sentence;

17. Secondly, there are no mitigating circumstances of the victim's family; the Probation Officers Report is not very favorable and brings out the fact that tension and bitterness still exists between the victim's family and the applicant; the report states that neither the applicant nor her family have attempted to comply with the terms and conditions agreed upon for reconciliation; that due to the non-compliance tension and bitterness still exists between the applicant and the victim's family who happen to be her in-laws; save for the fact that the prison authorities have labelled the applicant as being a model prisoner she does not sound a remorseful due to the failure to take steps to reconcile with her in-laws; to date there has been no healing or forgiving and the existence of tension and bitterness has been perpetrated by the non-compliance; clearly the community is not ready to accept her back;

18. Having taken into consideration all the circumstances of the case this court finds that the most appropriate sentence in the circumstances is a term of forty (40) years imprisonment;

19. This court will take into consideration the provisions of Section 333(2) of the Criminal Procedure Code; the record reflects that the applicant had been arrested on the 21/06/1999 and judgment was delivered on the 18/04/2002; the time spent in prison during the trial translates to a period of three (3) years spent in custody from the time of her arrest; this period shall be taken into account and the applicants sentence shall commence from the date of her arrest which was 21/06/1999; case law relied upon **Titus Ngamau Musila alias Katitu CR. Case No.78 of 2014.**

FINDINGS AND DETERMINATION

20. For the foregoing reasons this court makes the following findings and determinations;

- i. This court finds that the application has merit and is hereby allowed.
- ii. The sentence imposed is hereby set aside and substituted with a custodial sentence for a term of forty (40) years; the sentence is reduced proportionately by the period the applicant has spent in custody from the date of arrest which was 21/06/1999.

Orders accordingly.

Dated, Signed and Delivered at Nyeri this 18th day of June, 2020.

HON. A. MSHILA

JUDGE