



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT MILIMANI**

**CRIMINAL DIVISION**

**MISC CRIMINAL APP. 37 OF 2018**

**ROLEX ODHIAMBO AKEYO.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The Applicant herein was charged with murder contrary to Section 203 of the Penal Code. He was found guilty by the High Court and sentenced to suffer death. The same was upheld by the Court of Appeal. Following the decision of the Supreme Court in **Francis Karioko Muruatetu and Another V Republic** which decreed mandatory death sentence as unconstitutional, the Applicant herein sought to be resentenced.
2. The Applicant made his mitigation in this court. He pleaded with the court for leniency. He stated that it was true that he killed his wife. He invited the court to look at the condition of his children. His daughters who were now 19 and 17 years were left without a caregiver. His mother died and so the children were now left to fend for themselves. It was also his submission that failure of care and protection had lent his 17 year old daughter to get pregnant. He also noted that the parents of the deceased had forgiven him and needed him to come home to take care of his children.
3. The Respondent, represented by Miss Atina, invited the court to set aside the death sentence and mete out an alternative sentence. Miss Atina also stated that the Applicant was a first offender, he was remorseful and that the deceased's parents had forgiven him.
4. The Applicant killed his wife in their matrimonial home. This happened at night and the children who were in the house heard their mother scream for help. They responded to the cries in the company of their aunt who was spending a few days with them. The children were beaten by the Applicant and they ran back to the room. The aunt, a cousin to the deceased, was also chased away by the Applicant.
5. The children are victims not only of the absence of parents but also the clear loss of a mother. The fact that the Applicant is squarely responsible for this predicament cannot escape the attention of the court. The Applicant appears more keen to substitute the custodial sentence than about justice.
6. The court is instructed by the guidelines provided in the Muruatetu case as well as the Sentencing Policy Guidelines. At paragraph 71 of the judgment, this court is instructed to consider the social reform and re-adaptation of the offender. The Applicant has failed to demonstrate the manner in which an alternative noncustodial sentence will facilitate social reform and re-adaptation.
7. The Sentencing Policy Guidelines give objectives and considerations to be made. Objectives are rehabilitation, retribution, denunciation and community protection. It also gives considerations that either aggravate or mitigate the offence. They are the fact of being a first offender and secondly remorsefulness of the offender.
8. It is clear that he is remorseful, he is conscious of the loss and pain that has befallen his children. He has responsibilities to third parties namely his children. It is not possible to wish away his intentional taking of another life. His actions are to be denounced and retribution served. It is the duty of the court to guard against the demands of justice being watered down.
9. On the part of this court, the parents of the deceased who were present during the mitigation were invited to make their comments. They stated that they had forgiven the Applicant for the sake of his children whom they knew were suffering. They pleaded with the court to release him so that he could go back home and look after them.
10. It is clear that the accused was in custody since the commencement of the trial in 2008. As such, he is entitled to having that period considered while determining the sentence. He has cumulatively spent about 11 years in custody as at date.

11. It is the view of the court that the death sentence and life sentence may not meet the ends of justice. It is the desire of the court that the Applicant reforms and denounces his actions. He also must allow the family time to heal from the pain and loss. I shall also consider that he is a first offender. This fact shall be balanced against the circumstances that he sent away his children and their aunt who had gone to rescue the deceased. This definitely was indicative of the fact that he wanted the deceased dead. This other limb justice must be served.

12. In trying to balance all these circumstances I set aside the death sentence and substitute it with an order that the Applicant shall serve 15 years imprisonment. The time spent in custody of ten years, seven months shall be taken into account. It is so ordered.

**Dated and delivered this 26<sup>th</sup> day of February, 2019**

**G. W. NGENYE-MACHARIA**

**JUDGE**

**In the presence of:**

*1. Applicant present in person*

*2. M/s Sigei for the Respondent*