



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

HIGH COURT MISC. APPLICATION CASE NO. 563 OF 2018

LESITT, J

JACKLINE VIDANYA BARAZA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING ON RE-SENTENCE

1. This application came before this court by way of Chamber Summons filed in a Petition brought under **sub-section 216 and 329 of the Criminal Procedure Code, section 333 of Criminal Procedure Code** and invokes **Joseph Kaberia Kahiga & Others vs. AG Petition No. 618 of 2010**. Even though it was not quoted, the application for Resentencing is based on the Supreme Court Judgment of **Francis Kariko Muruatetu and Another versus Republic and Others [2017] eKLR, Petition No. 15 and 16 of 2016 [consolidated]**.
2. The Applicant was convicted by this court on 19th April 2011 for the offence of murder contrary to **section 203** as read with **section 204** of the **Penal Code**, where I sentenced the Applicant to the death penalty. Her appeal to the Court of Appeal was dismissed on 6th November, 2015 and the conviction and sentence upheld by that court.
3. In her brief submission in support of her Petition the Applicant has indicated that she is still facing the death penalty as her sentence has not been committed as yet. There is nothing to confirm that position, but for purposes of this application it matters very little whether the Applicant's sentence has since been commuted to life imprisonment based on the Supreme Court judgment of **Muruatetu**, supra.
4. The Applicant has pleaded with the court to forgive her and pass a lenient sentence. She urged the court to consider her mother who is aged. She has no family of her own as the baby she got was 2 weeks old at the time of her arrest, but died during her incarceration.
5. The Applicant urged that she had undergone various courses, learned various skills and that she was capable of fending for herself if she was given a chance to re-integrate into the society. She also urged that she had developed a relationship with God and will never commit such an offence ever again. She said that the underlying cause of the incident were constant struggles and fights with the deceased.
6. The Learned Prosecution Counsel Ms. Onunga urged the court to consider guidance given in the **Muruatetu** case which include considerations whether the accused is remorseful and regrets her actions. Counsel urged that the accused was not remorseful then given the fact she hid for one year after committing the offence and in her defence denied the offence.
7. Counsel urged the court to consider the vicious and brutal manner in which the deceased was attacked and the fact that the deceased was an old lady and was found with five stab wounds. Counsel submitted that the sentence she was facing was fair.
8. I did call for a Re-sentencing Probation Report which has been filed. The most important information which I required was a Victim Impact Statement. That was not included in the Report for reason the family of the victim in this case were not found.
9. I have considered all the submissions given by the Applicant and also the Prosecution. I also considered the Probation Officers Report.
10. Murder still remains a very serious offence because no one has the right to take life for whatever cause. It is God who gives life and He alone should take it away.
11. I am impressed by what the Applicant has learnt while in prison, both in terms of life skills and also in terms of spirituality.

12. As I said earlier, we have no reaction from the family of the victim who are also victims in this case. Even without any statement from them, it goes without saying that indeed the victims have suffered untold loss as the deceased was an elderly woman with a husband and children. Incident took place in their home. It is traumatizing to find a dead body at home.

13. It is worse given the circumstances of this case that the deceased was stabbed on the head and neck and her long hair tied around her neck. The kitchen knife was the one used to do it. There was no apparent motive for the attack. On the circumstances it is fair to conclude that the Applicant was vicious and also merciless.

14. Having taken all these circumstances with consideration, I will sentence the Applicant to 25 years imprisonment to be calculated from the date she was arraigned in court on 5th February, 2009.

15. Those are my orders.

DATED AT NAIROBI THIS 29TH JULY, 2019

LESIT, J

JUDGE