

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

MISC. APPLICATION NO.10 OF 2019

(From Court of Appeal Np.75 of 2011 at Nakuru High Court Original Criminal Case No.62 of 2003)

IN THE MATTER OF RE-HEARING OF SENTENCE UNDER ARTICLE 22 (1), 1 (3), 3 (2) (4), 19 (3), 25, 26, 27 (1) 28, 29, 50 (2) (q), 160 (1), 159 (1), 165 (3), (B) OF THE CONSTITUTION OF KENYA AND SECTION 261 OF THE CRIMINAL PROCEDURE CODE CAP 75 LAWS OF KENYA

JAMES KIPKEMOI NGETICH.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING ON SENTENCE RE-HEARING

1. This matter has been brought to this court by way of Notice of Motion for sentence re-hearing.
2. The matter arose from Kericho High Court Criminal Case No.62 of 2003 wherein the applicant was tried for the murder of his wife, was convicted and sentenced to death as provided under section 204 of the Penal Code (cap. 63) on 27th January 2006.
3. His appeal to the Court of Appeal under Nakuru Criminal Appeal No.75 of 2006 was dismissed on 11th September 2011.
4. This matter has been brought to this court for sentence re-hearing in line with the reasoning and orders of the Supreme Court in the Case of **Muruatetu and Another vs Republic –Supreme Court Petition No.15 of 2015** – where the Supreme Court pronounced the mandatory nature of the death penalty as unconstitutional.
5. The Assistant Director of Public Prosecutions Mr. Ayodo in response said that the death sentence imposed on the applicant, had been commuted to life imprisonment, while the applicant on his part relied on the mitigation made by his counsel before the trial court and added that he was now a trained artisan, and had learnt his lesson and become reformed and very religious in prison. He asked for forgiveness.
6. I note that in mitigation before the trial court, Mrs Bett for the convict (applicant) stated that her client was 46 years old, had several children with a paralysed mother, was sole bread winner of the family and was sorry for committing the offence. Counsel added that the convict came from a very poor family background who were landless, and urged the court to exercise leniency.
7. In considering re-sentencing, I take into account that the applicant asked for leniency at the trial, and he still asks for leniency today. He has been in custody since he was charged in 2002. He has now served about 13 years in prison since 2006 when he was sentenced.
8. I thus set aside the existing sentence and order that instead the convict (applicant) will serve twenty (20) years imprisonment from the date he was sentenced by the trial court.

Dated and delivered at Kericho this 31st day of October 2019.

George Dulu

JUDGE