



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

MISC. CRIMINAL APPL. NO. 599 OF 2018

ARISING FROM HIGH COURT CRIMINAL CASE NO. 8 OF 2011

PETER MUSAU MUTUAAPPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

1. The Applicant was convicted and sentenced by this court to suffer death as the law was then. However after the court passed the sentence the Supreme Court in the now famous **FRANCIS KARIOKO MURUATETU** case outlawed the mandatory nature of death sentence and gave the court the discretion to pass an appropriate sentence.
2. The Applicant therefore approached the court to be re-sentenced and having withdrawn the Appeal which he had filed, the court now has jurisdiction to re-sentence the same.
3. In his submissions he has sought to be sentenced to fifteen (15) years and the nine (9) years he had been in custody to be taken into account as provided for under **Section 333** of the **Criminal Procedure Code**.
4. The court called for Pre-sentencing report where it is confirmed that the Applicant and the victim were working together at Karen. The Applicant alleges that the victim attempted to poison him and as a result of the said provocation he hit her.
5. I have however noted that after the commission of the offence the Appellant buried the victim at a place where he was cooking and continued to cook as if nothing had happened.
6. I have also looked at the Victim's Impact Statement where it is clear that they are still traumatized by her death though the Christians in their family have following on the footsteps of their founder forgiven the Appellant.
7. I have taken note that the Applicant is forty two (42) years old and has been in prison for a period of nine (9) years, whereas he has proposed a sentence of fifteen (15) years. Having taken into account the nature of the offence and the action of the Applicant thereafter, I am persuaded that a stiffer sentence is still necessary so as to act as a deterrence to would be offenders.
8. I have said before and will repeat that every person has a right to life and should not have the same taken away from him/her simply because they are in a relationship which is not working.
9. The Applicant broke the trust of the family that had employed him and took him into their home only for him to kill the victim thereat and to bury her body in their compound. The Applicant should have known better that crime does not pay and even if the deceased attempted to poison him as alleged, he had better ways to resolve their romantic problems than to hit her, kill her and bury her.
10. I would therefore substitute the death sentence with an imprisonment period of thirty (30) years backdated to 13/01/2011 when the Applicant first appeared before Okwengu J. as she then was.

Dated, delivered and signed at Nairobi this 30th day of October, 2019.

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J. WAKIAGA

JUDGE

In the presence of:-

Applicant in person for the Applicant/Accused

Mr. Okeyo for the State

Accused - present

Court assistant: Karwitha