



REPUBLIC OF KENYA



KENYA LAW
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**Jebet v Republic (Criminal Petition 307 of 2023)
[2025] KEHC 1743 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1743 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL PETITION 307 OF 2023
E OMINDE, J
FEBRUARY 13, 2025**

BETWEEN

DORCAS KETER JEBET PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. The Petitioner was charged with the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#) in Eldoret High Court Criminal Case No. 96 of 2003. She was charged alongside Joseph Boit, Nelson Cheruiyot Tuikong and Ernest Kipkemoi Bwalei. The particulars of the offence were that on 30th September 2003 at Kabore Sub Location, Lolmingai location in Nandi North District in Rift Valley province, they murdered Hillary Kimisik Malakwen.
2. The Petitioner pleaded not guilty and the matter proceeded to full hearing. Upon considering the evidence tendered in court and the testimonies of the witnesses, the court convicted the 1st and 2nd accused persons on the main charge of murder, sentencing them to death vide judgment delivered on 28/11/2011.
3. Being aggrieved with the sentence and conviction, the petitioner appealed via Eldoret Criminal Appeal No. 10 of 2012, which appeal was dismissed on 30/01/2013. She remained on death row until November 2016 when her sentence was commuted to life imprisonment by the then president Uhuru Kenyatta.
4. The Petitioner then instituted the present petition vide a Notice of Motion dated 02/11/2023 seeking the following orders;
 - i. That this honourable court be pleased to order rectification of the Petitioners' warrant of commitment to prison and remove/delete the term of years of the Petitioners' resentence



period of 45 years and substitute it with a resentence term of years that would entitle her to immediate release or to a merciful and/or lenient determinate period of incarceration.

- ii. The honourable court be pleased to issue such orders as may be fair and just to secure the Petitioners' constitutional rights.
5. The application is premised on the grounds on the face of it and the contents of the supporting affidavit sworn by the Petitioner.

Hearing of the Petition

6. The parties agreed to prosecute the petition vide written submissions. The Petitioner filed submissions dated 05/12/2024 through the firm of Messrs Oduor, Munyua & Gerald Advocates. The prosecution filed submissions dated 10/11/2024 through state counsel S. G Thuo.

Petitioners' submissions

7. Learned counsel for the petitioner gave a brief factual background of the petitioners' case and pointed out that she has been in custody for two decades. Counsel urged that in determining sentence, the court must consider all sentencing objectives in totality, of which reform and rehabilitation are essential aims. Further, that in choosing an appropriate sentence, the Court must avoid arbitrariness by basing its decision firmly on the principles of proportionality. He additionally urged that the Court shall consider any and all mitigating circumstances that might earn the Petitioner the Court's compassion
8. Counsel urged that the court has the jurisdiction to review the Petitioner's sentence under Article 165 (3) (b) of *the Constitution*, read with Article 50 (2) (p) and (q). That the outcome of these provisions, read together, is that where a punishment has been declared unconstitutional, as has been the case for the mandatory death penalty, a convict who has been subject to that unconstitutional sentence may seek resentencing.
9. It is the Petitioners' case that the mandatory death penalty was declared unconstitutional by the Supreme Court in Francis Karioko Muruatetu & Another v Republic (SCK Petition No.15 of 2015) [2017] eKLR. He urged that the effect of the Muruatetu Decision is that any court dealing with the offence of murder is allowed to exercise judicial discretion by considering any mitigating factors in sentencing an accused person charged with and found guilty of that offence. Counsel pointed out that in Muruatetu & Another v Republic; Katiba Institute & 4 others (Amicus Curiae) (Petition No. 15 & 16 of 2015) [2021] KESC 31 (KLR) (the "Muruatetu Directions"), the Supreme Court issued guidelines which on resentencing hearings for offenders' subject to the mandatory death penalty. Additionally, he cited Section 329 of the *Criminal Procedure Code* and the Sentencing Policy Guidelines published in the Kenya Gazette of 1st September 2023 to buttress his submissions.
10. Counsel submitted that the effect of the Muruatetu Directions on the *Criminal Procedure Code* is that, in cases dealing with the offence of murder, the convict is entitled to a wholly individualised hearing in which the sentencing judge considers the evidence, the nature of the offence, the circumstances of the case, the personal circumstances and history of the offender in order to arrive at an appropriate sentence. He stated that the discretionary sentencing procedure requires that the Court shall consider any and all mitigating circumstances that might earn the convict the Court's compassion, including the non-exhaustive list of factors set out in the Muruatetu Directions.
11. Counsel stated that the Petitioner has now served more than 20 years in prison and in view of the mitigating factors, she should be resented to a term of years that would entitle her to immediate



release or a determinate period of incarceration. Counsel urged that the Petitioners' prayer for resentencing is based on six broad submissions which, in summary, were:

- i. In determining sentence, the Court must consider all sentencing objectives in totality, of which reform and rehabilitation are essential aims, not solely retribution or vengeance.
 - ii. In choosing an appropriate sentence, the Court must avoid arbitrariness by basing its decision firmly on the principles of proportionality.
 - iii. The Court shall consider any and all mitigating circumstances regarding the offence and the offender that might earn the Petitioner the Court's compassion.
 - iv. The severe psychological torture and unendurable suffering caused by the Petitioner's protracted confinement on death row merits special consideration as a mitigating factor.
 - v. Previous serious violations of the Petitioner's constitutional rights mitigate in favour of a lesser sentence.
 - vi. A sentence of life imprisonment without the possibility of release must not be imposed as such a sentence has been declared unconstitutional by the Court of Appeal in *Julius Kitsao Manyeso v Republic (Criminal Appeal 12 of 2021)* [2023] KECA 82 (KLR)
12. Counsel pointed out the aims of punishment of offenders through the criminal justice system as routinely recognised by the Kenyan courts citing the case of *Dahir Hussein v Republic (Criminal Appeal No. 1 of 2015)* [2015] eKLR I support of this submission. That further, the objectives of reform and rehabilitation are established in the International Covenant on Civil and Political Rights to which Kenya is a party. He cited Article 10(3) of the ICCPR and submitted that a clear focus on reform and rehabilitation is perceptible in the jurisprudence of the Kenyan Courts when deciding resentencing cases. He cited the case of *John Ndegwa Njuguna v Director of Public Prosecution (Petition No.29 of 2018)* [2019] eKLR in support of this submission. Additionally, counsel cited the cases of *Esther Wanjeri Kamau & another v Republic (Misc. Application No.4 & 5 of 2018)* [2019] eKLR, *Karen Chepkorir Koech v Republic (Misc. Criminal No,132 of 2018)* (2018) eKLR and the case of *Peter Ndirangu Kinyua v Republic (Misc. Criminal Application No. 234 of 2019)* [2020] eKLR.
13. Counsel urged that the Petitioner has consistently demonstrated her reformation and rehabilitation since the commission of the crime more than 20 years ago. She actively participates in many prison activities and interacts extremely well with both fellow prisoners and prison staff. In particular, she has substantially developed her theological understanding, love of God and Christian character through the many courses she has taken. She has studied and been awarded certificates for;
- i. a one-year Animation Course in ten different subjects including building Christian communities, leading community service, self-reliance, and counselling certificate.
 - ii. a Diploma certifying that she has taken twelve Discover Bible School Lessons on a range of topics
 - iii. a course of study prescribed by the Amazing Facts Bible School (certificate dated 15th October 2016.
14. Counsel urged that the Senior Chaplain Rebecca Wanyeki has confirmed that the petitioner has shown a very consistent and steady Christian character, demonstrated exemplary love of God through active participation in church, choir, and in receiving holy communion. Further, that in terms of leadership qualities, engagement with her community, and general character, she has substantially reformed and rehabilitated herself such that she is safe and ready to make a real contribution to society outside prison.



He laid out statements from the officer in charge, letters from the chaplain and various certificates as proof of reform and urged that the petitioner has taken several practical courses to improve her skills and abilities in order to develop herself and be in a position to make a contribution to society should she ever be released from prison.

15. Counsel urged that the key sentencing objectives in the Petitioners' case have been achieved and further, that to impose a custodial sentence which requires any further service of time would be purely vengeful, in violation of her right to dignity. He maintained that the principle of proportionality in the Kenyan sentencing process is enshrined as one of the "Principles Underpinning the Sentencing Process" at [1.2.1] of the SPGs. Additionally, that Article 50 of *the Constitution* upholds the right to have a fair determination of a matter. Fairness demands that the sentence imposed should neither be excessive nor less than is merited.
16. Counsel reiterated that the petitioner is a first-time offender and urged that Kenyan Courts often stress that "the general rule is that a maximum sentence should not be imposed on a first offender" as was held in *Samuel Kimutai Bor v Republic* (Criminal Appeal No. 56 of 2016) [2017] eKLR, *Salim Juma Onyango v Republic* (Criminal Appeal No. 17 of 2017) [2017] eKLR and *Patrick Kagundu Mungira v Republic* (Criminal Appeal No. 46 of 2019) [2020] eKLR. He urged that Kenyan Courts have often considered good character and evidence of rehabilitation following conviction as mitigating factors in resentencing hearings and cited the case of *Mohamed Iddi Omar v Republic* (Petition No. 31 of 2018) [2019] eKLR among others in support of this submission.
17. Counsel submitted that the petitioner was remorseful and that this principle has been applied in Kenyan resentencing hearings, referring the court to the decision of the *Esther Wanjeri Kamau & another v Republic* (Misc. Application No. 4 & 5 of 2018) [2019] eKLR where remorse (coupled with the convicts' reform) was a significant consideration in the Court's ordering the immediate release of two applicants who had been subject to the death penalty. He additionally cited the cases of *Dominic Maina Wanjiru v Republic* (High Court Petition No. 2 of 2019) [2021] eKLR and *Republic v Samwel Munyoki Mulungu* (Criminal Case No 55 of 2020) [2020] eKLR in support of his submissions.
18. It is the Petitioners' case that when she was arrested she left behind three young children who have grown to adulthood over the intervening 20 years without the support or love of a mother. Further, that the secondary role the petitioner played in the offence should be considered in resentencing her. Counsel urged the court to follow the jurisprudence of the Malawian Courts applying the principle that minor participation in an offence is a mitigating factor as was held in *Kafantayeni v Attorney General*, Constitutional Case No. 12 of 2005 [2007] MWHC. He submitted that the evidence suggests that while present and involved to an extent, the Petitioner was not a primary perpetrator in the fatal harm caused to the deceased. That testimonies varied, with PW1, PW2, and PW3 stating they saw her carrying sticks, and PW2 alleging she beat the deceased, but PW4 did not observe her with the main group involved in the fatal attack. Even the trial judge recognized that, while among those present during the assault, the petitioner did not directly participate in the killing but rather assisted in questioning and allegedly struck the deceased in a non-fatal manner.
19. That her involvement, though regrettable, was limited to aiding in what appears to be a misguided attempt to obtain information from the deceased and did not constitute active participation in his death. Additionally, he stated that the provocation of the petitioner to the offence was due to her credible belief in witchcraft. That the existence of a credible belief in witchcraft as a mitigating factor has been considered by the Kenyan and Malawian courts. Counsel cited the case of *Patrick Tuva Mwanengu v Republic* (Criminal Appeal No. 272 of 2006), *Republic v Laston Mukiwa* (Sentence Rehearing Cause No. 21 of 2015) (unreported) and *Republic v Edwin Uladi, Mkoma Kaputen and Stenale Nashele* (Sentence Rehearing Cause No. 36 of 216) in support of this submission.



20. It is the Petitioners' case that Kenyan Courts, during resentencing hearings, have given due consideration to the effect of the offence on the victim's family in mitigation. Counsel cited the case of Paul Kinyanjui Njenga (Misc. Criminal Application No. 8 of 2019) [2020] eKLR and the case of James Kazungu Lunganje v The Director of Public Prosecutions (Petition No. 128 of 2018) among other cases in support of this position. He stated that the umpire representing Malakwen's family delivered a final address, assuring the Petitioner's family and community that there was no lingering animosity towards Boit's family.
21. That the umpire expressed a willingness for future intermarriages between both families, symbolizing a restored bond and the potential for a positive, united future. The sharing of a meal from the same pot further emphasized the deepening of trust and reconciliation between the two families, marking the successful resolution of their differences. Counsel urged that this act of unity is a powerful indication of the healing process that has taken place and reinforces the argument for a more lenient sentence, as it reflects the applicant's commitment to restoring peace and harmony in the community.
22. Counsel reiterated that the severe psychological suffering caused by the Petitioner's protracted confinement on death row merits special consideration as a mitigating factor. Commonly known as 'death row phenomenon', the psychological torture associated with the anticipation of one's execution worsens with time. Counsel referred the court to the description of this phenomenon as laid out by Liacos J in Suffolk County District Attorney v Watson, 411 N.E.2d 1274, 1289-95 & nn. (Mass. Supreme Judicial Court 1980) [AUTH_49], at [1290-92].
23. Counsel submitted that in the resentencing hearing in Mohamed Iddi Omar v Republic (Petition No. 31 of 2018) [2019] eKLR, the High Court of Kenya at Malindi also took into account "the psychological trauma and pain that the petitioner had suffered of being death row for a period of over 13 years awaiting the execution of the death penalty" among other mitigating factors, when ordering the petitioner's immediate release (with three years on probation). Counsel cited a plethora of other cases and urged that for the years Ms. Keter spent on death row, the mental torment of her incarceration had continuously been exacerbated by her terror that she could be executed. That she has had to endure this psychological torture whilst serving an unconstitutional sentence weighs heavily in favour of immediate release or a short further term of years in prison.
24. Counsel urged that the Petitioner has suffered serious and ongoing breaches of her constitutional rights amounting to the infliction of cruel, inhuman and degrading treatment by the State, as prohibited by Articles 25(a) and 29(1) of *the Constitution*. Further, that these violations preclude the imposition of a death sentence upon her and in these circumstances, the only reasonable sentence which could be imposed by the Court is one which results in her immediate release or a reasonable period of years in prison. He stated that the petitioner suffered from instances of unreasonable and unjustifiable delay, in violation of her rights to a fair trial. Firstly, she was held on remand for eight years from 13th November 2003 until 29th November 2011, when her sentence was delivered. This very delay was criticised in harsh terms by the Court of Appeal in Dorcas Jebet Keter & another v Republic (Criminal Appeal No, 10 of 2012) [2013] eKLR. Counsel cited the finding of the judges and submitted that they described Ms. Keter's previous ordeal as "injustice nearing torture" is alarming.
25. He urged that it is right that this Court now considers this injustice and provides an appropriate remedy Secondly, the Petitioner is only now to receive a constitutional sentence, close to a decade after the offence in remand custody, and for over five years where she has languished under the unconstitutional sentence of the mandatory death penalty. Counsel posited that the unreasonably long delay in both conviction and sentencing is a clear violation of the Petitioner's rights to a fair trial within a reasonable period guaranteed by Article 50(2)(e) of *the Constitution* of Kenya and Article 7(1)(d) of the African



- Charter of Human and Peoples' Rights. He urged that this principle has been accepted by the Kenyan Courts in the cases of *Albanus Mwasda Mutua v Republic* (Criminal Appeal 120 of 2004) [2006] eKLR, *Republic v George Kamau Marega* (Criminal Case no. 75 of 2006) [2008] eKLR and *Republic v Maurice Bhasio Odhiambo* (Criminal Case 43 of 2007) [2008] eKLR.
26. Counsel further submitted that Ms. Keter has been subjected to cruel and inhuman treatment throughout her two-decade-long incarceration by way of deplorable prison conditions, in contravention of Articles 25(a) and 29 (f) of *the Constitution* and International Law. Counsel pointed out the observations on prison conditions by the UN in "Concluding observations on the third periodic report of Kenya" (2022, United Nations Committee Against Torture) and further, stated that the prevailing conditions on death row make imprisonment yet more alarming as per a survey conducted in 2012 by the KNCHR. He urged that the petitioner be released as the conditions in prison were deplorable.
27. Counsel urged that the Petitioner is entitled to be granted a remedy for constitutional violations on the basis that every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated, or infringed, or is threatened as per Article 22 (1) of *the Constitution*. Further, that in any proceedings brought pursuant to Article 22, the Court may grant appropriate relief. To determine the appropriate relief, counsel referred the court to *Kenya Hotel Properties Limited v Attorney General and 5 Others (Constitutional Petition No. 438 of 2015)* [2018] eKLR. He also invited the court to consider the approach taken by Courts in other jurisdictions.
28. Counsel urged that, as relief for the constitutional violations which the Petitioner has suffered, her sentence should be reduced accordingly. He urged that in the Kenyan jurisdiction a sentence of "life" is indeterminate; it is assumed that the life sentence means the number of years of the prisoner's natural life, in that it ceases upon his or her death. Further, that life sentence has since been declared unconstitutional by the Court of Appeal in *Julius Kitsao Manyeso v Republic (Criminal Appeal No. 12 of 2021)* [2023] KECA 827 (KLR). He additionally stated that a life sentence, by its very nature, can be construed as a de facto death sentence. Given that a life sentence can only be considered served upon the death of a convict, it amounts to a form of inhumane and degrading punishment, as it offers no genuine opportunity for rehabilitation or hope for release.
29. Counsel urged that the Petitioner has established several mitigating factors in her favour, in addition to serious constitutional violations, and prayed that the petitioners' sentence be reduced to a term of years resulting in her immediate release or a short term of further imprisonment.

Respondents' submission

30. Learned counsel for the state, S.G Thuo filed submissions dated 15/11/2024. He urged that when considering a matter for resentencing the court must evaluate the evidence in respect of each case and determine whether there existed aggravating factors. It is his view this is a case where aggravating factors far outweighed the mitigation the applicant had offered. The crime committed was heinous and the permissible sentence by law ought to have been a death sentence.
31. Counsel urged that a 45-year sentence was lenient in the circumstances and the court is clothed with the power retain the same. He asked the court to dismiss the application.

Analysis & Determination

32. Under Article 165(3)(b) of *the Constitution*, this Court has the jurisdiction to consider constitutional issues that may arise from its own decisions and also the power to review a sentence as provided under Article 50(2)(p) as read with Article 50(2)(q) of *the Constitution* which provides that an accused has



the right to the benefit of the least severe of the prescribed punishments for an offence if the prescribed punishment for the offence has changed between the time the offence was committed and the time of sentencing and if convicted to apply for review.

33. In the decision of the Supreme Court in the case of *Muruatetu & another v Republic; Katiba Institute & 4 others (Amicus Curiae)* (Petition 15 & 16 of 2015) [2021] KESC 31 (KLR) (6 July 2021) (Directions) the apex court issued the following directions: -

“ 16. To the extent directly relevant to the matters under review in these directions, we note the Attorney General in his Report, together with the Task Force recommended, that:

- a. Life imprisonment be substituted where the *Penal Code* previously provided for the death penalty, with the option of life imprisonment without parole for the most serious of crimes; and that if not abolished, the death penalty should only be reserved for the rarest of rare cases involving intentional and aggravated acts of killing.
- b. All offenders, subject to the mandatory death penalty, including those convicted and sentenced prior to 2010, who are serving commuted sentences, will be eligible for re-sentencing, including all offenders sentenced to death as at the time of the decision which was made on December 14, 2017.
- c. Where an appellant has lodged an appeal against a conviction and/or sentence, the appellate court must, at any stage before judgment, remit the case to the trial court for re-sentencing.....”

Having considered all the foregoing, to obviate further delay and avoid confusion, we now issue these guidelines to assist the Courts below us as follows:

- i. The decision of *Muruatetu* and these guidelines apply only in respect to sentences of murder under sections 203 and 204 of the *Penal Code*;
- ii. The Judiciary Sentencing Policy Guidelines to be revised in tandem with the new jurisprudence enunciated in *Muruatetu*;
- iii. All offenders who have been subject to the mandatory death penalty and desire to be heard on sentence will be entitled to re-sentencing hearing.
- iv. Where an appeal is pending before the Court of Appeal, the High Court will entertain an application for re-sentencing upon being satisfied that the appeal has been withdrawn.
- v. In re-sentencing hearing, the court must record the prosecution’s and the appellant’s submissions under section 329 of the *Criminal Procedure Code*,



as well as those of the victims before deciding on the suitable sentence.

- vi. An application for re-sentencing arising from a trial before the High Court can only be entertained by the High Court, which has jurisdiction to do so and not the subordinate court.
- vii. In re-hearing sentence for the charge of murder, both aggravating and mitigating factors such as the following, will guide the court;
 - a. Age of the offender;
 - b. Being a first offender;
 - c. Whether the offender pleaded guilty;
 - d. Character and record of the offender;
 - e. Commission of the offence in response to gender-based violence;
 - f. The manner in which the offence was committed on the victim;
 - g. The physical and psychological effect of the offence on the victim's family;
 - h. Remorsefulness of the offender;
 - i. The possibility of reform and social re-adaptation of the offender;
 - j. Any other factor that the court considers relevant.
- viii. Where the appellant has lodged an appeal against sentence alone, the appellate court will proceed to receive submissions on re-sentencing.
- ix. These guidelines will be followed by the High Court and the Court of Appeal in ongoing murder trials and appeals. They will also apply to sentences imposed under section 204 of the *Penal Code* before the decision in Muruatetu.

34. The Judiciary Sentencing Policy Guidelines, 2023 published by the Kenya Judiciary lays out the objectives of sentencing as follows;

- i. Retribution: To punish the offender for his/her criminal conduct in a just manner.
- ii. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
- iii. Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.



- iv. Restorative Justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims, communities' and offenders' needs and justice demand that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.
 - v. Community protection: To protect the community by incapacitating the offender.
 - vi. Denunciation: To communicate the community's condemnation of the criminal conduct.
 - vii. Reconciliation: To mend the relationship between the offender, the victim and the community.
 - viii. Reintegration: To facilitate the re-entry of the offender into the society.
35. In *Republic v Muema Makali* [2019] eKLR the Petitioner killed three people before burning their bodies and attempting to commit suicide. Odunga J. substituted the death sentence meted out to a term of 40 years' imprisonment.
36. From the *Muruatetu* Decision cited above and subsequent directions given in *Muruatetu II* as herein above cited, it is clear that there has been a change in the law on sentencing in murder cases in that in all cases of persons charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*, Courts now have the discretion to mete out sentences that they consider appropriate in light of all the personal and peculiar circumstances pertaining to persons found guilty and convicted of the said offence before it including their mitigation. In this regard therefore, if the Court is satisfied with the merits of the applicant's Application herein, it has the power and mandate to review the same as provided under Article 50 (2) (p) as read with 50 (2) (q) of *the Constitution*.
37. In the instant case, a perusal of the review proceedings confirms that it is indeed correct that the Ruling on the Application for Review delivered by the Hon Mr. Justice Reuben Nyakundi on 7th August 2023 which reviewed the death sentence meted out to a term of 45 years' imprisonment was with respect to the Petitioner Paul Boit only and was not in conjunction with and/or including the Petitioner's sentence. The assertion by this Petitioner that her Petition for review was not at all heard is therefore correct.
38. Further, I note that from the Report filed by one Rebecca Wanyeki dated 15th January 2019 and signed on behalf for the Officer in Charge of Langata Women's Prison where the Petitioner is currently serving sentence recommending that her Petition for review of the sentence be considered favourably by the Court, it is stated that the Petitioner was sentenced to suffer death in the year 2011 and the sentence was thereafter commuted to life imprisonment in the year 2016. The Petitioner was therefore on death row for a period of 5 years before the commutation of her sentence.
39. I have considered the recommendation that the Court considers her Petition favourably on the basis of all the activities the Petitioner has engaged in in her quest to reform during her period of incarceration including her engagement in industry work, sports, peer counselling, helping to settle in new inmates by virtue of the fact that her character and sense of responsibility has improved tremendously and that she is dedicated, responsible and respectful and is in charge of the industry and basketry section. Various Certificates of achievements have been attached to the letter.
40. The Petitioner has also stated in her submissions that she was a young mother of three when she was sentenced and that she regrets the fact that her children who are now fully grown were not able to benefit from her motherly love. She states that she is remorseful for the part that she played that



occasioned the death of the deceased and that the role she played was only peripheral and that further, she genuinely believed that the deceased had bewitched their mother who was sick at the time.

41. I have perused the Judgement of Justice Mohamed Ibrahim (as he then was) delivered on 29th November 2021 which in its summary of the evidence has detailed how the offence was committed and what role the Petitioner played. From my summation of the said evidence on the manner in which the offence was committed, it is my considered opinion that the deceased met his death in a very heinous, cruel, brutal and calculated manner in the hands of the Petitioner and her then co-accused. I am also of the considered opinion that her participation was not as peripheral as she would want the Court to believe.
42. I have addressed my mind at length to the Petitioner's mitigation and the circumstances of the commission of the offence. I have also taken into account the objectives of sentencing as herein above outlined. I note the fact that even as Counsel in his submission states that the Petitioner has suffered much and particularly from the syndrome known as the "Death Row Syndrome" as herein above described, the fact as stated in the Recommendation Letter is that she was on death row not for all the years that she has been in incarceration, but for only 5 out of the 20 years and when I say only 5, let it be noted that it is not to disregard or make light of this length of time, but simply to underscore the fact that it was not for the entire period that she has been incarcerated as has been submitted by Counsel.
43. From all the above, I am satisfied that the application for the review of the applicant's sentence from the death sentence that was subsequently commuted to life imprisonment, whose indeterminate nature has also been declared as unconstitutional by the Court of Appeal in the case of *Julius Kitsao Manyes v Republic (Criminal Appeal No. 12 of 2021)* [2023] KECA 827 (KLR) to a less severe of the prescribed punishments is merited.
44. Being satisfied that the manner in which the deceased met his death was very heinous, cruel, brutal and calculated, I am persuaded to adopt the sentence as reduced for the Petitioner Joseph Boit who was this Petitioner's co-accused, by the Hon Mr. Justice Nyakundi for the reasons therein given and by the holding of Mr. Justice Odunga in the herein above cited case of *Republic v Muema Makali* [2019] eKLR. In this regard then, I hereby set aside the sentence of life imprisonment and substitute the same with a sentence of 45 years' imprisonment. This sentence is to run from the date of the Petitioner's arraignment in Court.
45. Right of Appeal 14 days

READ DATED AND SIGNED AT ELDORET ON 13TH FEBRUARY 2025

E. OMINDE

JUDGE

