



REPUBLIC OF KENYA



KENYA LAW
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**Waithera v DPP (Criminal Revision E235 of 2024)
[2025] KEHC 2810 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2810 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL REVISION E235 OF 2024
HM NYAGA, J
MARCH 6, 2025**

BETWEEN

JACKLINE WAITHERA APPLICANT

AND

DPP RESPONDENT

RULING

1. The accused was charged with the offence of murder, contrary to section 203 as read with section 204 of the Penal Code.
2. The particulars of the offence are that on the 23rd day of July 2018 at Kongocheke village, Kaaga location, Imenti North Sub-county within Meru County she murdered EN a child aged 12 years old.
3. The applicant pleaded guilty, despite repeated warning from the court. Satisfied that her plea of guilty was unequivocal, the accused was subsequently convicted and sentenced to death.
4. The applicant avers that her death sentence was later commuted to life imprisonment by the President, under the powers bestowed upon him under Article 133 of the constitution
5. The applicant has now moved this court for re-sentencing, as guided by the case of Francis Muruatetu and other vs Republic [2017] eKLR (Muruatetu 1) and Francis Muruatetu and others vs Republic [2021] eKLR (Muruatetu 2)
6. The state counsel did not oppose the re-sentencing. Relying on Julius Kitsao Manyeso vs Republic [2020] eKLR, she urged the court to substitute the indeterminate life sentence with a definite prison term of 30 years.

The question of re-sentencing of persons convicted for murder is now well settled. It is the only offence, circumstances allowing, that this court can be called upon to re-sentence an applicant. This was confirmed by the Supreme Court in Petition No. E018 of 2023 Republic Vs Joshua Gichuki Mwangi



(Respondent) & Initiative for strategic litigation in Africa & 3 others (Amicus curiae), where it was held that;

“Section 204 of the Penal Code deprives the court of the use of judicial discretion in a matter of life and death. Such law can only be SC Petition No. E018 of 2023 26 regarded as harsh, unjust and unfair. The mandatory nature deprives the courts of their legitimate jurisdiction to exercise discretion not to impose the death sentence in appropriate cases. Where a court listens to mitigating circumstances but has, nonetheless, to impose a set sentence, the sentence imposed fails to conform to the tenets of fair trial that accrue to accused persons under article 25 of the constitution; an absolute right.....

Consequently, we find that section 204 of the Penal Code is inconsistent with the constitution and invalid to the extent that it provides for the mandatory death sentence for murder. For the avoidance of doubt, this decision does not outlaw the death penalty, which is still applicable as a discretionary maximum punishment”.

7. It is with the above in mind that I make the following directions:-
- a. A Re-sentencing Report to be prepared by the Probation office in the next 30 days.
 - b. If possible the relatives of the victim to avail themselves in court for their views to be recorded as provided for under section 329 and 329A to 329D of the Criminal Procedure Code.
 - c. A date to be given shortly after these directions are given.

SIGNED, DATED AND DELIVERED AT MERU THIS 6TH DAY OF MARCH 2025.

H.M. NYAGA

JUDGE

