

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION MILIMANI**

**MISC. APPLICATION NO. 712 OF 2018**

**STANLEY KURGAT** .....

**APPLICANT**

**VERSUS**

**REPUBLIC** .....

**RESPONDENT**

***(Being a re-sentencing application arising from a death sentence in High Court Nairobi - Milimani***

***Criminal Case No. 51 of 2011)***

**RULING**

1. The Applicant, was charged and convicted of Murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars of the charge are that on the 12<sup>th</sup> day of June, 2011, at Ongata Rongai in Ngong District within Kajiado County, the Applicant murdered

Catherine Chepkemoi. Following the conviction, he was sentenced to death on 17<sup>th</sup> November, 2015.

2. On 19<sup>th</sup> July, 2023, vide a gazette notice number 9566, the President, in the exercise of the powers conferred by **Article 133** of the **Constitution of Kenya** and **Section 23 (1)** of the **Power of Mercy Act, 2011**, commuted the death sentence imposed on every capital offender as of 21<sup>st</sup> November, 2022 to a life imprisonment sentence.
3. Following the decision in **Francis Karioko Muruatetu & another v Republic (2017) eKLR**, a judgment delivered on 14<sup>th</sup> December, 2017, the Applicant seeks re-sentencing.
4. The Supreme Court directed that all offenders who had been subject to the mandatory death penalty and desired to be heard on sentence were entitled to a re-sentencing hearing, remitting the matter to the High Court for sentencing. The sentence proceedings indicate that the Applicant's case is among those where a mandatory death sentence was imposed.
5. This Court has confirmed through correspondence with the Deputy Registrar of the Court of Appeal that no

appeal has been filed regarding the conviction and sentence imposed. Therefore, this Court has jurisdiction to hear and determine the present application.

6. The background of the trial in **Criminal Case No. 51 of 2011** is that the deceased was the Applicant's employer. He killed her at night in a poultry house, dumped her body in a septic tank, and fled to his rural home. The deceased was 7 months pregnant. Her body was retrieved the following day after an intense search involving the police. The post-mortem on the body of the deceased revealed several laceration wounds on the frontal head, the base of the skull and left cheek; abrasions wounds on the left cheek, inner side of the left eye and left toe. There was also a depression on the frontal head to the base of the skull with a haemorrhage in the brain. There were also two abrasions on the female organ caused by forced penetration. The cause of death was massive blunt injury to the head.
7. The trial Court was satisfied the prosecution proved that the accused had malice aforethought at the time he inflicted the injuries he did on the deceased.

8. In mitigation, the Applicant expressed remorse and apologized to the deceased's family. He was 24 years old at the time of his sentence and was thus around 20 years old at the time of the offence. In his submissions, he urged the Court to consider his age and give him another chance in life.
9. The Respondent opposes the application for resentencing and urges the Court to consider that the victim was pregnant, as well as the circumstances of the offence, should the Court be inclined to give a definite term of imprisonment.
10. The Court ordered a social inquiry report that revealed the significant emotional turmoil experienced by the deceased's mother. She expressed that her grief is unbearable and that the healing process has been painfully slow. The report also highlighted the circumstances of the offence, particularly the issue of unpaid wages, which the trial Court concluded was evident from the evidence presented.

11. The **Judiciary of Kenya Sentencing Policy Guidelines** lists the objectives of sentencing at page 15, paragraph 4.1 as follows:

***“Sentences are imposed to meet the following objectives:***

***1.Retribution: To punish the offender for his/her criminal conduct in a just manner.***

***2.Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.***

***3.Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.***

***4.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 demands that these are met. Further, to promote a sense of responsibility***

*through the offender's contribution towards meeting the victims' needs.*

**5. Community protection: To protect the community by incapacitating the offender.**

**6. Denunciation: To communicate the community's condemnation of the criminal conduct."**

12. In the case of **Francis Karioko Muruatetu & Another v Republic**, Petition No. 15 of 2015, the Supreme Court stated that:

***“(71) To avoid a lacuna, the following guidelines with regard to mitigating factors are applicable in a re-hearing sentence for the conviction of a murder charge:***

***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. remorsefulness of the offender;***

***g. the possibility of reform and social re-adaptation of the offender;***

***h. any other factor that the Court considers relevant.”***

13. I have carefully considered the various factors related to this case, including the mitigation presented by the Applicant and his age at the time of the offence, which was just 20 years. The Applicant has spent nearly 15 years in custody, a significant portion of his young adult life.

14. Additionally, I have reviewed the social inquiry report, which provides insights into the Applicant's background, character, and circumstances leading up to the offence. I have also taken into account the Respondent's submission, highlighting the nature of the crime committed, which is characterized as egregious, considering the victim was pregnant, and the crime has had profound implications for the victim's family. I have also examined similar applications for resentencing for comparison.

15. I hereby re-sentence the Applicant to prison imprisonment of thirty years (30) years effective from the date of arrest, 18<sup>th</sup> June, 2011.

16. It is so ordered.

**DATED, DELIVERED and SIGNED at NAIROBI through the Microsoft Teams Online Platform on this 1<sup>ST</sup> day of APRIL, 2025.**

.....

**C. KENDAGOR**

**JUDGE**

**In the presence of:**

Court Assistant: Beryl

Appellant present

Mr. Omondi, ODPP for Respondent