



**Tallam v Republic (Criminal Miscellaneous Application
E022 of 2024) [2025] KEHC 5574 (KLR) (6 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5574 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL MISCELLANEOUS APPLICATION E022 OF 2024**

RN NYAKUNDI, J

MAY 6, 2025

BETWEEN

REBECCA TALLAM APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein was charged, convicted for the offence of murder contrary to section 203 as read with 204 of the [Penal Code](#) and sentenced to death. Aggrieved with the decision of the High Court, the applicant filed an appeal to the Court of Appeal, which appeal was dismissed and the sentence upheld vide the court's judgment dated 10th November, 2023. The applicant has since filed an application filed on 1st March, 2024 in which he seeks a sentence rehearing in criminal case no. E054 of 2009. He sought a lenient sentence pursuant to the provisions of Art. 50(2)(p)(q) of the [Constitution](#). He also sought that the court invokes the provisions of section 333(2) of the [Criminal Procedure Code](#).
2. The Application is supported by the annexed affidavit dated 29th February 2024 sworn by Rebecca Tallam, the Applicant herein, where she avers as follows;
 - a. That I was charged and convicted for the offence of murder contrary to section 203 as read with 204 of the [Penal Code](#) at High Court in Eldoret.
 - b. That I was sentenced to suffer death.
 - c. That my appeal to the Court of Appeal was dismissed in its entirety *vide* COA No. 67 of 2018 at Eldoret was dismissed.
 - d. That I don't have any pending matter in court thus this application.
 - e. That the sentenced imposed by the trial court is manifestly harsh and excessive in the circumstance of the case in light of emerging jurisprudence i.e. [Francis Karioko Muruatetu](#)



Ɖ Another v Republic (2017) eKLR, Malindi Criminal Appeal No. 12 of 2021, *Julius Kitsao Manyeso v Republic*.

- f. That the predetermined death sentence without any prospect of release or a possibility of review is degrading and inhuman punishment thus beg the court review the same to facilitate rehabilitation and social re-integration.
- g. That he has been in prison custody for 15 years 11 months' years and learnt important lessons from her incarceration.

Analysis and Determination

- 3. Having read through the Petitioner's application, the only issue I find for determination is whether the sentence review is merited. The court's ruling in *Francis Karioko Muruatetu v Republic* was that sentencing is a judicial function and that the mandatory nature of the death penalty for murder was unconstitutional because it took away the courts' discretion to determine a just and proportionate punishment to impose on a convicted person. In its judgment, the court ordered that the judiciary sentencing policy be revised to reflect the court's guidelines on the obligation of courts to listen to the accused's mitigation before sentencing. The court also directed that a framework for sentence rehearing be prepared immediately to allow applicants who had been sentenced in circumstances similar to those of the petitioners to apply for sentence a rehearing from the trial court.
- 4. In a sentence re-hearing for the charge of murder, both aggravating and mitigating factors such as the following, would 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; and,
 - j. Any other factor that the court considered relevant.
- 5. A glance at the Petitioner's application clearly reveals a re-hearing of the death sentence. As to the conditions to be satisfied for one to qualify for re-trial, Article 50(6) covers that in speaking in the following terms;
 - (6) A person who is convicted of a criminal offence may petition the high court for a new trial if: -
 - a. The person's appeal, if any, has been dismissed by the highest court to which the person is entitle to appeal, or the person did not appeal within the time allowed for appeal; and
 - b. New and compelling evidence has become available.



6. The aforementioned legal provisions clearly give the Petitioner a second chance to be heard only on sentence. The duty of this court therefore is to have the application considered through the lens of Art. 50(2)(p) and (6) and determine whether the instant application is merited.
7. Upon consideration of the application, I note that the Court of Appeal on 10th November, 2023 delivered its judgment after a comprehensive review of the matter. The appellate court was satisfied that the learned trial court had properly taken into account both the mitigating and aggravating factors in this case. The Court of Appeal found no reason to warrant an interference with the sentence imposed by the trial court. Further, the present application does not demonstrate any new and compelling evidence as required under Article 50(6)(b) of *the Constitution* to justify a sentence rehearing. The applicant has merely cited the passage of time spent in custody, which does not constitute new evidence. While the court acknowledges the applicant's rehabilitation efforts during her incarceration period of 15 years and 11 months, this alone is insufficient to trigger the court's jurisdiction for sentence review in the absence of new and compelling evidence. Consequently, this application is hereby dismissed.

DATED AND SIGNED AT ELDORET THIS 6TH DAY OF MAY, 2025

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R. NYAKUNDI

JUDGE

