



**Salim v Republic (Miscellaneous Criminal Application
E012 of 2023) [2024] KEHC 105 (KLR) (18 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 105 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
MISCELLANEOUS CRIMINAL APPLICATION E012 OF 2023**

**JR KARANJA, J
JANUARY 18, 2024**

BETWEEN

ERICK IMBUGUA SALIM APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant, Erick Imbugua Salim was the second Accused when he was charged with two other before the Senior Resident Magistrate at Kapsabet for the offence of Robbery with Violence, Contrary to Section 295 as read with Section 296(2) of the *Penal Code*. It was alleged that on the May 24, 2014 at Sirwa Yalla Village Nandi County jointly with others not before the court, the Applicant and his Co-Accused robbed Mary Siahhi Musanga of her personal property and at or immediately before or immediately after the time of such robbery killed the said Mary Siahhi Musanga.

There were two alternative counts of handling stolen property Contrary to Section 322 of the *Penal Code* but these affected the Applicants Co-Accused and not the Applicant.

2. Upon pleading not guilty on the main count, the Applicant was tried and convicted after which the then mandatory death sentence was imposed on him on the July 29, 2016. He was allowed to mitigate before the sentencing. Being aggrieved with the conviction and sentence, the Applicant filed an appeal at the High Court in Eldoret being Criminal Appeal No. 84 of 2016.

The Appellate Court revisited the evidence availed against the Accused/ Applicant at the trial court as well as the defence raised by himself and concluded that his conviction by the trial court was proper and the sentence imposed upon him was lawful. The appeal was thus dismissed for want of merit.



3. As regards the sentence, the Appellate Court rendered itself thus: -

“I am keenly aware of the decision in *Francis Karioko Muruatetu and Another Vs. Republic* (2017) eKLR. Regarding the mandatory death sentence. I also pay regard to the very traumatic circumstances surrounding this case, that they invade a home, talk to the deceased’s spouse demanding money as a condition for sparing his wife’s life, and before the sound can fade off from the airwaves, the Appellant and his company brutally drive a knife through her mouth right upto the back of her neck. And all this in aid of what? To take away what someone else worked hard for. They took away both life and property and in my view he does not deserve mercy. I find that the sentence meted was most appropriate and I decline to interfere with it.

4. Unmoved by the outcome of the appeal, the Applicant attempted a “Second bite at the cherry” not by way of a second appeal to the Court of Appeal as he was required to do but by way of the present application giving rise to these sentence review proceedings anchored on the alleged violation of the Applicant’s constitutional rights by the imposition of the death sentence which was at the time a mandatory sentence for which the trial court had no discretion.

Both the Applicant’s notice of motion and chamber summons filed herein on June 9, 2023 points towards an alleged violation of the Applicants Constitutional Rights. However, the Applicant has failed to show or demonstrate how his constitutional rights were violated by the imposition of the death sentence which by dint of the *Muruatetu Case* (Supra) is no longer a mandatory sentence.

5. Indeed, the *Muruatetu Case* had a major effect of outlawing the mandatory nature of the death sentence, but not the death sentence itself as exists in the Penal Code with regard to a charge of murder and by extension to a charge of Robbery with Violence Under Section 296(2) of the *Penal Code*.

The Applicant’s arguments in support of the Application are basically a plea in mitigation whereby he seeks the mercy of the court to have the death sentence imposed upon him by the trial court and upheld by the Appellate Court reviewed in his favour and substituted for a sentence of imprisonment.

6. However, consideration being given to the circumstances of the case and the manner in which a victim of the offence was mercilessly “slaughtered” like a chicken by the gang of robbers including the Applicant, there would be no room to accord mercy to the Applicant at least, not at this juncture. Doing so, would be making a mockery of the death of the victim and probably unleashing a psychopath on the public under the pretext that he has since reformed, become a good Christian and seen the heavenly light.

In sum, this application is devoid of merit and is hereby dismissed.

DELIVERED AND DATED THIS 18TH DAY OF JANUARY 2024.

**J. R. KARANJAH,
JUDGE**

