



REPUBLIC OF KENYA



KENYA LAW
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Kairiama v Republic (Petition E015 of 2021) [2024] KEHC 774 (KLR) (1 February 2024) (Ruling)

Neutral citation: [2024] KEHC 774 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
PETITION E015 OF 2021
EM MURIITHI, J
FEBRUARY 1, 2024**

BETWEEN

JACKSON KAIRIAMA PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. By a Notice of Motion under Articles 23(1), 25 (c) (d), 51(1), 163 (7) and 165(3)(b)(d)(i) of the Constitution, the petitioner seeks, “That, may this honourable court be pleased to re-sentence the petitioner considering facts; mitigation and sentence to the Supreme Court’s Judgment dated 14th December 2017 in the Consolidated Petitioner No 15 and 16 of 2015 Between Francis Karioko Muruatetu and another v Republic.”
2. The petitioner in his affidavit in support of the application avers that he was convicted of murder and sentenced to death. He lodged appeal No 19/2013 in the Court of Appeal, which was dismissed on 28/11/2013. In the 17 years he has been in incarceration, he has undergone various rehabilitative programs and he is ready to contribute to the Nations Development. In view of the unconstitutional nature of the death sentence pursuant to the Supreme Court’s pronouncement in the Francis Muruatetu, he urges the court to consider his mitigation and hand him a sentence commensurate to the offence committed.
3. Directions were taken that the application be heard by way of written submissions which were duly filed on 10/5/2022 and 16/5/2023 respectively.
4. The petitioner urged the court to consider his mitigation and the fact that he was a first offender, and cited Francis Karioko Muruatetu & another v Republic (2017) eKLR, Yawa Nyale v Republic (2018) eKLR, Evans Wanjala Wanyonyi v Republic (2019) eKLR, S v Jansen 1999 (2) SACR 368 and S v Malgas 2001 (2) 5(a) 1235.



5. The respondent urged the court to uphold the sentence, but prayed for the current impact statement and the prison report on the petitioner’s overall conduct to be considered.

Analysis and Determination

6. In *Francis Karioko Muruatetu & another v Republic* [2017] eKLR, the Supreme Court held that;

“The mandatory nature of the death sentence as provided for under Section 204 of the *Penal Code* is hereby declared unconstitutional. For the avoidance of doubt, this order does not disturb the validity of the death sentence as contemplated under Article 26 (3) of the *Constitution*.”

7. The petitioner, who has been in incarceration for the last 17 years, contends that he has since reformed after successfully taking various courses while in prison, and he is ready to contribute the Nation’s development. There is a re-sentencing report by the probation officer recommending the petitioner’s release back to the community. The current change of attitude and behavior of the petitioner is expressed in that report as follows, “The inmate still maintains his innocence; he says that other known persons committed the offence but not him. He is however pleading to the honorable court that he be considered for release. He is very optimistic that once released he will use the skills acquired while in prison to rebuild his life. He promises that he will initiate further reconciliation once released.”
8. The evidence on record is that the petitioner, while armed with a gun fired indiscriminately at the deceased and another person, without any provocation and/or legal justification.

Orders

9. Accordingly, in view of the principles set out in *Muruatetu Case* (*supra*), the emerging binding jurisprudence from the Court of Appeal, the objectives of sentencing as laid down in the *Judiciary Sentencing Policy Guidelines* and the recommendations made in the pre-sentence report, this court substitutes the death sentence with an imprisonment for a term of 30 years.
10. Pursuant to the provisions of section 333 (2) of the *Criminal Procedure Code*, and for avoidance of any doubt, that sentence is inclusive of the years the petitioner has been in incarceration.

Order accordingly.

DATED AND DELIVERED ON THIS 1ST DAY OF FEBRUARY, 2024.

EDWARD M. MURIITHI

JUDGE

Appearances

Mr. Masila for DPP

Applicant in person.

