



REPUBLIC OF KENYA



KENYA LAW
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**Yegon v Republic (Criminal Petition 19 of 2018)
[2024] KEHC 2822 (KLR) (13 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2822 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL PETITION 19 OF 2018
JK SERGON, J
MARCH 13, 2024**

BETWEEN

ANTHONY KIPKORIR YEGON PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. The Petitioner was convicted for the offence of murder contrary to section 202 as read with section 204 of the Penal Code. He was sentenced to death on 8th March, 2007 by Musinga J. (as he then was). However, the sentence was commuted to life imprisonment after presidential pardon.
2. The Applicant being aggrieved with the conviction and sentence meted out by the trial court, appealed to the Court of Appeal at Nakuru vide Criminal Appeal No. 36 of 2020, which appeal was subsequently withdrawn.
3. The Applicant therefore filed the instant application for resentencing. In the notice of motion before this court, the applicant stated that he filed the application for re-sentencing in light of the Supreme Court Case of Francis Karioko Muruatetu & Another v Republic [2017] eKLR of where the court declared that the mandatory death penalty is unconstitutional. The Applicant stated that his application for resentencing was anchored on Article 165 (3) (b) of the Constitution.
4. The Applicant filed written submissions for mitigation in support of his application for re-sentencing whereby he stated that he was remorseful for having committed the instant offence, which was motivated by a land feud between him and the deceased. The Applicant submitted that while under incarceration he had reformed and acquired skills to help him earn a living upon his release and re-integrate back to society. The Applicant invited this Court to look into the following personal circumstances; that at the time when he was incarcerated he was a young person aged 28 years, newly



married and had children who were of school going age. He therefore urged this Court to consider the resentencing application in view of the judiciary sentencing policy and guidelines.

5. The prosecution did not oppose the application for resentencing. Mr. Musyoki, Learned Assistant Director of Public Prosecutions contended that the death sentence was not outlawed. However, he conceded that the Court can review the sentence based on the facts of the case.
6. The following legal provisions empower this court to entertain a re-sentencing application under Article 165 of *the Constitution*, which clothes the High Court with jurisdiction to hear and determine applications for redress of a denial, violation or infringement of or threat to, a right or fundamental freedom in the bill of rights as well as Article 50 (2) (p) (q) as read with Article 50 (6) (a) and (b) of *the Constitution*.
7. The Supreme Court issued Practice Directions in *Muruatetu & another v Republic; Katiba Institute & 4 others (Amicus Curiae)* (Petition 15 & 16 of 2015) [2021] KESC 31 (KLR) (6 July 2021) to guide the courts on resentencing application such as the one before this Court. The Supreme Court stated as follows;

“Having considered all the foregoing, to obviate further delay and avoid confusion, we now issue these guidelines to assist the Courts below us as follows:

- i. The decision of *Muruatetu* and these guidelines apply only in respect to sentences of murder under sections 203 and 204 of the Penal Code;
- ii. The Judiciary Sentencing Policy Guidelines to be revised in tandem with the new jurisprudence enunciated in *Muruatetu*;
- iii. All offenders who have been subject to the mandatory death penalty and desire to be heard on sentence will be entitled to re-sentencing hearing.
- iv. Where an appeal is pending before the Court of Appeal, the High Court will entertain an application for re-sentencing upon being satisfied that the appeal has been withdrawn.
- v. In re-sentencing hearing, the court must record the prosecution’s and the appellant’s submissions under section 329 of the *Criminal Procedure Code*, as well as those of the victims before deciding on the suitable sentence.
- vi. An application for re-sentencing arising from a trial before the High Court can only be entertained by the High Court, which has jurisdiction to do so and not the subordinate court.
- vii. In re-hearing sentence for the charge of murder, both aggravating and mitigating factors such as the following, will 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; (j) Any other factor that the court considers relevant.
- viii. Where the appellant has lodged an appeal against sentence alone, the appellate court will proceed to receive submissions on re-sentencing.



ix. These guidelines will be followed by the High Court and the Court of Appeal in ongoing murder trials and appeals. They will also apply to sentences imposed under section 204 of the Penal Code before the decision in Muruatetu.

8. I have considered the application for resentencing plus the submissions by the prosecution and the applicant. I have also taken cognizance of the fact that the applicant withdrew his appeal from the Court of Appeal and consequently a notice of withdrawal was filed. Having considered all the above, I find that indeed this court has jurisdiction to entertain the application based on the decision of the Supreme Court on Muruatetu, *supra*. In the result, the Applicant's application is allowed. I set aside the death sentence and the life imprisonment which was imposed against him when the death penalty was commuted to Life Imprisonment. I substitute the death sentence and life sentence with a sentence of 25 years imprisonment. Consequently, Anthony Kipkorir Yegon is hereby sentence to serve 25 years imprisonment from the date of sentence i.e. from 8th March, 2007.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 13TH DAY OF MARCH, 2024.

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J.K. SERGON

JUDGE

In the presence of:

C/Assistant - Rutoh

Prosecutor – Mr. Musyoki

Petitioner – Present in Person

