



**Ezra v Republic (Criminal Petition E027 of 2023)
[2024] KEHC 7348 (KLR) (19 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7348 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL PETITION E027 OF 2023
JK SERGON, J
JUNE 19, 2024**

BETWEEN

KIPROP KERICH EZRA PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. The petitioner herein was charged for the offence of murder contrary to section 203 and section 204 of the *Penal Code* vide Kericho High Court Criminal Case No. 4 of 2012. The particulars of the offence being that on 12th day of January, 2012 at Mortgage Estate in Kericho District within the Rift Valley Province murdered Zeddy Chemutai.
2. The petitioner herein was charged for the offence of attempted suicide contrary to section 226 of the *Penal Code* vide Kericho High Court Criminal Case No. 4 of 2012. The particulars of the offence being that on the 12th day of January, 2012 at Mortgage Estate in Kericho District within the Rift Valley Province, attempted to kill himself by stabbing himself on the throat using a kitchen knife.
3. The petitioner was convicted for both counts and sentenced to a mandatory death sentence which was subsequently commuted to life imprisonment.
4. The petitioner being aggrieved with the conviction and sentence meted out by the trial court, appealed to the Court of Appeal, however, the petitioner informed this Court that the appeal was yet to be heard and determined at the time he lodged the instant application and further that he had withdrawn the appeal.
5. It is against such background that the petitioner filed the instant application for resentencing in light of the decision of *Francis Karioko Muruatetu and Another v Republic* (Supreme Court Petition No. 15 of 2015) in which the apex court declared that the mandatory death sentence was unconstitutional. He



urged this court to review his sentence and grant a more lenient sentence that is informed by mitigation and the unique facts and circumstances of his case.

6. The parties filed written submissions which this Court has considered.
7. The petitioner submitted that he was remorseful, has undergone numerous rehabilitation programs and was therefore seeking to be handed a lesser sentence, that is in line with the aims of sentencing.
8. The petitioner submitted that he seeks a chance to address this Court on the mitigating circumstances, which would be used to mete out an appropriate sentence. The petitioner reiterated that the sentence imposed needs to take into account the need to accord the petitioner an opportunity and a chance to be rehabilitated in line with article 10 (3) of the *International Convention on Civil and Peoples' Rights* (ICCPR) which sets out the essential aims of imprisonment as "...shall be to reform the offender and promote social rehabilitation.". The petitioner cited the case of *Douglas Muthaura Ntoribi v Republic* [2014] eKLR where the court stated as follows; "A good working prison should be able to reform convicts. There is no legal research which leads to the conclusion that capital offence cannot be reformed."
9. The prosecution, being opposed to the application for resentencing, submitted that the victim was at the prime of her life at the time of her demise. The prosecutor maintained that the many stab wounds inflicted on the deceased clearly showed that the petitioner was intent on killing the victim. The prosecution therefore urged this Court to uphold the life sentence.
10. The High Court is clothed with the jurisdiction to entertain sentence review applications by virtue of Article 165 (3) (b) of the *Constitution*, which empowers 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. After a careful perusal of the mitigation submissions filed by the applicant, I find that the applicant is basically remorseful post-conviction and sentence.
11. The Applicant therefore seeks for leniency and beseeches this Court to mete out an appropriate sentence.
12. 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*. The petitioner has given his mitigating factors. In the result, the application is allowed. I hereby set aside the life imprisonment which was imposed against him when his death penalty was commuted to life. The applicant is hereby sentenced to 20 years from the date of Sentence
13. Orders to issue accordingly.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 19TH DAY OF JUNE, 2024.

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J.K. SERGON

JUDGE

