



Muchui v Republic (Petition 25 of 2020) [2023] KEHC 814 (KLR) (9 February 2023) (Judgment)

Neutral citation: [2023] KEHC 814 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
PETITION 25 OF 2020
TW CHERERE, J
FEBRUARY 9, 2023**

BETWEEN

STANLEY MWITHALIE MUCHUI PETITIONER

AND

REPUBLIC RESPONDENT

JUDGMENT

1. On 09th March, 2009, Petitioner attacked Peter Gitau with a panga and inflicted serious injuries on his head and neck, trachea, spinal cord, and the caroid arteries and left jugular veins were severed as a result of which Gitau died.
2. Petitioner was arrested and charged with murder in Meru High Court Criminal Case No. 27 of 2009 and was convicted and sentenced to suffer death on 31st July, 2014.
3. Petitioner's appeal to the Court of Appeal *vide* Criminal Appeal No. 40 of 2015 (*Stanley Mwithalie Muchui v Republic* [2016] eKLR) was dismissed and the conviction and sentence were upheld.
4. Petitioner pleads for resentence on the ground that he has been rehabilitated.
5. Ms. Mwaniki, learned counsel for the state submitted that the sentence imposed on the Petitioner was constitutional and urged the court to uphold it.

Analysis and Determination

6. Death is a lawful sentence. However, the Supreme Court decision in *Francis Kariuki Muruatetu & Another v Republic & 5 others* [2016] eKLR declaring the mandatory death sentence unconstitutional has necessitated resentencing of all persons previously sentenced to the mandatory minimum and maximum sentences.



7. I have considered The Sentencing Policy Guidelines, 2016 and its application which is intended to promote transparency, consistency and fairness in sentencing (See *Michael Kathewa Laichena & another v Republic* [2018] eKLR).
8. The post mortem report on record reveals that deceased died of severed neck and head injuries caused by a sharp object
9. Under the proviso to section 333(2) of the *Criminal Procedure Code* (Chapter 75 of the Laws of Kenya), the court is entitled to take into account the period the Petitioner has spent in custody in determining the sentence. The court record shows that the petitioner has served 10 years but has been in custody for 13 years from the date of his arrest.
10. The Petitioner did not annex any certificate to demonstrate that he had undertaken any course as a means of reformation. His home report is favourable. He is remorseful and regrets his actions.
11. I have considered the mitigating and aggravating factors. It is not lost to this court that the Petitioner without any provocation, killed the deceased in the most painful way of severing his neck. Deceased's life was lost through no fault on his part.
12. Whereas no length of sentence can restore life, I re-sentence Petitioner to twenty five (25) years' imprisonment from date of his arrest on 09th March, 2009 which time in my considered view will give him time to reflect on his actions and come out of prison a better person.

DELIVERED AT MERU THIS 09TH DAY OF FEBRUARY 2023

T. W. CHERERE

JUDGE

Appearances

Court Assistant - Kinoti

Petitioner - Present

For the State - Ms. Kitoto (PPC)

