



**Ndungu v Republic (Miscellaneous Application 9 of 2020)
[2023] KEHC 1733 (KLR) (Crim) (14 March 2023) (Resentence)**

Neutral citation: [2023] KEHC 1733 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS APPLICATION 9 OF 2020
LN MUTENDE, J
MARCH 14, 2023**

BETWEEN

GEORGE NJOROGE NDUNGU APPLICANT

AND

REPUBLIC RESPONDENT

RESENTENCE

1. George Njoroge Ndungu, the Applicant/Offender, was charged and convicted for Murder contrary to Section 203 as read with Section 204 of the *Penal Code*. Following the conviction, he was sentenced by Mutuku J. to suffer death on the 3rd day of December, 2017. Following the decision of *Muruatetu v Republic* (2017) eKLR, a judgment delivered on December 14, 2017; the applicant has petitioned this court for re-sentence. The applicant had appealed the decision to the Court of Appeal, but, withdrew the application. (See the Order of the Court of Appeal dated January 20, 2020).
2. Briefly, evidence adduced was that the applicant was the elder brother of the deceased and they lived in the same homestead. On the fateful day, the applicant who had a domestic dispute with his wife ordered her to leave their matrimonial home. She sought help from her brother in law, the deceased, who accompanied her back to her house. They found the door open, but, could not see the applicant. The deceased called him out but he did not answer. In the result the wife to the applicant entered the house with a view of taking her clothes so as to leave. The applicant held and pulled her into the bedroom but she managed to escape and ran into the deceased's house to seek refuge. All over a sudden the deceased called out for help. The applicant who attacked him stabbed him severally with a metal pipe on the head, neck, upper and lower limbs. The deceased succumbed following the blunt trauma.
3. In mitigation, the applicant expresses remorse. He mitigates that he was a first offender, a young man aged 44 years at the time of his arrest. That he engaged in rehabilitative programs while in prison and



acquired artistic skills certificates. He has promised to take part in counselling activities for other people so that they don't commit heinous offences.

4. In response the respondent urges that the way the murder was committed was heinous.
5. A report filed by the Probation Officer following a social inquiry conducted disclose that victims have not healed following the ordeal. His father stated that the applicant is very aggressive and violent towards his nuclear and extended family. That he has continued to issue threats to his kin including his mother, wife and neighbours who testified against him. His wife and children who were victims of domestic violence but have now settled at her matrimonial home opposed his release as it will mean being relocated as the applicant was likely to accomplish the threats made of killing the whole family. His children did visit him in prison but he expressed no remorse.
6. The community led by the assistant chief confirmed having received allegations of threats from the appellant. He is of the view that the appellant poses great danger to his family and community, therefore, they were of the view that the applicant was better of serving the instant imprisonment. Therefore, the Probation Officer found that the applicant was not suitable for a non-custodial sentence.
7. The applicant herein has been incarcerated for a period of twelve(12) years. He has received certification in Shoe-making and has exhibited good conduct in prison.
9. In the case of *Francis Karioko Muruatetu & Another v Republic*, Petition No. 15 of 2015, the Supreme Court stated that:

“(71) To avoid a lacuna, the following guidelines with regard to mitigating factors are applicable in a re-hearing sentence for the conviction of a murder charge:

- (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) Remorsefulness of the offender;
- (g) The possibility of reform and social re-adaptation of the offender;
- (h) Any other factor that the Court considers relevant.”

10. The Judiciary of Kenya *Sentencing Policy Guidelines* lists the objectives of sentencing at page 15, paragraph 4.1 as follows:

“Sentences are imposed to meet the following objectives:

1. Retribution: To punish the offender for his/her criminal conduct in a just manner.



2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
3. Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.
4. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.
5. Community protection: To protect the community by incapacitating the offender.
6. Denunciation: To communicate the community's condemnation of the criminal conduct."

11. The applicant has been incapacitated for a period that he has been incarcerated. However, following jurisprudence today, the ultimate form of removing a person from the society is rarely considered. Imprisonment and non-custodial sentences have become the most preferred approach.
12. The applicant argues that he has reformed but the argument by his family who live in fear has not been disproved. The conduct exhibited by the applicant when his sons visited him in prison which is not denied, does not suggest that he will be a productive person in the society if granted a non-custodial sentence.
13. Indeed, the applicant was a first offender, and is stated to be 55 years old. It is apparent that he has not sought forgiveness from his family. He is viewed as a terror to his community, letting him return to his community at this point in time is uncalled for.
14. In the premises, I hereby re-sentence him to serve Thirty-Nine (39) years imprisonment to be effective from the date of arraignment, 4th day of August, 2011.
15. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 14TH DAY OF MARCH, 2023.

L. N. MUTENDE

JUDGE

IN THE PRESENCE OF:

Applicant

Mr. Mwaura holding brief for Ms. Akunja for the State

Court Assistant – Mutai/Evance

