



**Machengo v Republic (Criminal Petition 8 of 2019)  
[2023] KEHC 3862 (KLR) (3 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3862 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CRIMINAL PETITION 8 OF 2019**

**REA OUGO, J**

**APRIL 3, 2023**

**BETWEEN**

**TIMOTHY BARASA MACHENGO ..... PETITIONER**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. Timothy Barasa Machengo, the petitioner, was convicted of the offence of murder. He was sentenced to death but is currently serving a life sentence from October 20, 2015. The petitioner states that his petition is filed in conformity with the judgment of the Supreme Court of Kenya of Francis Karioko Muruatetu. He seeks that this court reviews the sentence.
2. The application was opposed. Ms Omondi argued that the petitioner was convicted of murder and given a legal sentence. That he was convicted by a court of similar jurisdiction. That if he was unhappy he should have appealed.
3. The Supreme Court in *Francis Karioko Muruatetu & another v Republic* [2017] eKLR stated that the mandatory nature of the death sentence in section 204 of the *Penal Code* was inconsistent with the *Constitution* and held that the court has the discretion to impose a sentence other than death in accordance with the circumstances of the case. My understanding is that the death penalty is still prescribed in law.
4. Though the application is opposed. I am of the view that the Supreme Court ruling has given this court the authority to resentence the petitioner.
5. In the directions issued by the Supreme Court on July 6, 2021 in Petition No 15 & 16 (Consolidated)- *Francis Karioko Muruatetu & Another v Republic*, the Court directed that 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.
6. Applying the above guidelines ,the petitioners' mitigation and guidelines in sentencing laid down in the [Judiciary Sentencing Policy Guidelines, 2016](#) and further taking into consideration the circumstances under which the offence was committed, the seriousness of the said offence , it is my considered view that the petitioner Timothy Barasa Machengo still deserves a deterrent sentence.
7. In the end, the death sentence is hereby set aside and the same is substituted with 30 years' imprisonment. The said sentence will run from the date of sentence by the trial court being November 25, 2010 taking into account the period spent in remand before sentence and period already served. Right of appeal explained.

**DATED, SIGNED AND DELIVERED AT BUNGOMA VIA MICROSOFT TEAMS THIS 3<sup>RD</sup> DAY  
APRIL 2023.**

**R.E .OUGO**

**JUDGE**

In the presence of:

Petitioner in person

Mr. Ayekha For the State/Respondent

Okwaro C/A

