



**Nderitu v Republic (Miscellaneous Criminal Application  
226 of 2018) [2023] KEHC 18777 (KLR) (14 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18777 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
MISCELLANEOUS CRIMINAL APPLICATION 226 OF 2018**

**HK CHEMITEI, J**

**JUNE 14, 2023**

**BETWEEN**

**ESTHER WANJIKU NDERITU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was convicted and subsequently sentenced to death for the offence of robbery with violence contrary to section 296(2) of the [Penal Code](#) by the Chief Magistrate Court in Nyahururu in Criminal Case No 1998 of 2008. Being aggrieved by the said decision, the applicant appealed to the High Court for sentence re-hearing in line with the Muruatetu case doctrine.
2. The High Court on May 25, 2020, ordered the transfer of the applicant's case to the Chief Magistrate Court in Nakuru for sentence re-hearing. Thereafter, the trial Magistrate on July 22, 2021 issued directions that under the new guidelines by the Supreme court on hearing of resentencing cases she had no requisite jurisdiction to continue handling the matter.
3. The applicant now seeks re-sentencing of the sentence imposed by this court following the Supreme Court's decision in Francis Muruatetu & another v Republic, no 15 and 16 of 2015.
4. In her submission the applicant has pleaded that she had learnt with great pain that crime does not pay and she could not dare again to engage in any heinous and unlawful activity. She submitted that she had stayed in prison for 24 years and that was more than enough period for one to have a re-collection and re-correction of his mind. She submitted further that she had engage in vocational trainings offered at the penal facilities and had acquired viable skills in dress making and catering. That she was remorseful of the offence committed and had endeavoured to seek for forgiveness.
5. She went on to submit that her family was willing to accept her in the society if she was given a second chance and so was her community. She urged the court to consider her mitigation and that should it



settle for non-custodial sentence, then it considers the provisions of section 333(2) of the *Criminal Procedure Code*. She drew the court's attention to the cases of *Ahamad Abolfathi Mobammed & Another vs Republic* [2018] eKLR, *Bethwel Vislon Kibor v Republic* [2009] eKLR and *Gabriel Mwaka Masau v Republic* [2020] eKLR.

6. The respondent did not file any response to the applicant's application.
7. I have perused the record and clearly it is apparent that the applicant together with her co-accused persons committed the offence of robbery with violence which in itself is a capital offence hence the prescribed death sentence. Further, the import of punishment as provided in our statute books is to try as much as possible ameliorate the suffering of the victims. Nonetheless it is meant to somehow compensate for the loss by having the offender punished.
8. The applicant cannot benefit from the Muruatetu decision as the Supreme court clearly directed on July 6, 2021 that the same only applied to murder cases.
9. The applicant however shall be considered for a second chance as being a first offender in a sense permits this court to reconsider her prayers. Further, it is noted that she has been in custody from September 14, 2001 when she was arraigned in court until she was sentenced on May 19, 2003. Holding her in jail for life may not be efficacious as the trend now is to ensure that there is a definite period one ought to be in custody.
10. In view of the foregoing facts and the circumstances herein, the application is allowed, the death sentence meted against the applicant is hereby set aside and substituted with a custodial sentence of 25 years from September 14, 2001.
11. In view of the fact that the applicant has served almost the said period she is hereby released from custody unless lawfully held.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAKURU THIS 14<sup>TH</sup> DAY OF JUNE 2023.**

**H. K. CHEMITEI**

**JUDGE**

