



**Solomon v Republic (Miscellaneous Criminal Application
133 of 2018) [2023] KEHC 18430 (KLR) (14 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18430 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS CRIMINAL APPLICATION 133 OF 2018**

HK CHEMITEI, J

JUNE 14, 2023

BETWEEN

JOYCE KATHAMBI SOLOMON APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was sentenced to suffer death after she was found guilty of murder contrary to section 203 as read with section 204 of the *Penal Code* on September 22, 2017 in the High Court criminal case no 20 of 2010. She filed her appeal to the Court of Appeal which she later withdrew.
2. The applicant herein has filed the instant application before this court for re-sentencing on the grounds that the trial court did not consider mitigation, her previous record and that the sentence was too harsh and excessive.
3. The application was supported by the applicant's affidavit where she reiterated the contents of her application. She also deposed that the sentence of death as provided in the penal law was not mandatory and that the Supreme court in case Petition 15 and 16 of 2016 was applicable to her case.
4. The learned state counsel opposed the application vide a replying affidavit dated November 30, 2022 and filed in court on December 5, 2022. He averred that on December 14, 2017, the Supreme Court in *Francis Karioko Muruatetu & another V Republic* (2017) eKLR declared the mandatory nature of the death sentence as provided for under Section 204 of the *Penal Code* unconstitutional. That the said Supreme Court decision related to the mandatory nature of the death sentence under Section 204 of the *Penal Code* and not the validity of the death sentence.
5. The learned state counsel averred that the Supreme Court issued directions on eligibility for re-sentencing on July 6, 2021. That in the said directives and guidelines, the Supreme Court laid down factors to be considered when handling applications for re-sentencing including the age of the offender,



whether the offender pleaded, the remorsefulness of the offender among other factors throughout her prosecution.

6. He went on to aver that the applicant vehemently denied the commission of the offence and showed no remorse for her action. That the sentencing decision arrived at by the court was lawful, fair, and based on the evidence presented by the parties. Therefore, the prayer for re-sentencing sought by the applicant could not be granted and the same should be dismissed.

Analysis and Determination

7. The Supreme Court declared the mandatory death sentence to be unconstitutional and persons so convicted were at liberty and entitled to petition the trial court for re-sentencing. In line with the decision the trial court has the mandate to grant alternate sentences after taking into consideration mitigating factors.
8. In the *Muruatetu (supra)* case the Supreme Court gave guidelines with regard to mitigating factors which include but are not limited to;
 - i. Age of the offender;
 - ii. Being a first offender;
 - iii. Commission of the offence in response to gender-based violence;
 - iv. Remorsefulness of the offender;
 - v. Character and record of the offender; and the possibility of reform and social adaptation of the offender.
 - vi. Any other factors the court considers relevant.
9. The mitigating circumstances in the applicant's favour are that she was relatively young when she committed the offence; she was a first offender; and the reports from the prison demonstrates that she had reformed, was a model prisoner by embracing Christianity and had engaged in several trainings. Also, the re-sentencing report from the probation officer indicating that the applicant is remorseful, her family and the community have no problem of her going back home. Although it is indicated in the said report that she had emotional anger have in no adverse record while in prison.
10. Having taken into consideration all the circumstances of the case this court finds the above mitigating factors plausible and hereby sets aside the death sentence imposed against the applicant and substitutes it with a custodial sentence of 20 years from the September 22, 2017.

DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 14TH DAY OF JUNE, 2023.

H. K. CHEMITEI

JUDGE

