



Likhanga v Director of Public Prosecutions (Miscellaneous Criminal Application 97 of 2019) [2023] KEHC 20350 (KLR) (21 July 2023) (Ruling)

Neutral citation: [2023] KEHC 20350 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS CRIMINAL APPLICATION 97 OF 2019**

WM MUSYOKA, J

JULY 21, 2023

BETWEEN

HENRY LIKHANGA APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTIONS RESPONDENT

RULING

1. On November 12, 2021, I had directed the Deputy Registrar to serve a copy of the ruling on the County Director of Probation and Aftercare Services, so that he could have a re-sentencing report done, after considering the antecedents of the applicant, and taking the views of the family of the deceased, as well as those of the community. That was never done. I need to bring closure to the matter.
2. The applicant was convicted on November 2, 2010, of murder, in Kakamega HCCRC No 32 of 2005. Sentence was pronounced the same day. He was condemned to death. The decision in *Francis Karioko Muruatetu & another v Republic [2017] eKLR* (Maraga CJ & P, Mwilu DCJ & VP, Ojwang, Wanjala, Njoki & Lenaola SCJJ) had not yet been made, and so the trial Judge had no discretion in the matter, and imposed the mandatory sentence, death.
3. The application herein, which is undated, seeks re-sentencing, in view of Francis Karioko Muruatetu & another vs Republic [2017] eKLR (Maraga CJ & P, Mwilu DCJ & VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ). I note that in mitigation, on November 2, 2010, it was stated that the applicant was remorseful, and was asking for leniency. In response, the trial court noted that the actions by the applicant were reckless and unprovoked, and he deserved no mercy.
4. As the death sentence was pronounced unconstitutional in Francis Karioko Muruatetu & another vs Republic [2017] eKLR (Maraga CJ & P, Mwilu DCJ & VP, Ojwang, Wanjala, Njoki and Lenaola SCJJ), I believe that this is a proper case for re-sentencing. I have noted the mitigation, and the sentiments by the trial court. In view of that, I set aside the death sentence imposed, on November 2, 2010, and



substitute it with a sentence of imprisonment for 30 years. The time spent in remand custody shall be taken into account.

RULING DELIVERED, DATED AND SIGNED AT KAKAMEGA ON THIS 21ST DAY OF JULY 2023

W M MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Appearances

Henry Likhanga Lumiti, the applicant, in person.

Ms. Kagai, instructed by the Director of Public Prosecutions, for the respondent.

