



REPUBLIC OF KENYA



Republic v Kihara (Criminal Case 26 of 2008) [2023] KEHC 20143 (KLR) (13 July 2023) (Ruling)

Neutral citation: [2023] KEHC 20143 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CRIMINAL CASE 26 OF 2008
FN MUCHEMI, J
JULY 13, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

MACHARIA KIHARA ACCUSED

RULING

1. The accused person was convicted of the offence of murder contrary to sections 203 as read with 204 of the Penal Code by this court presided by Ngaah J on November 9, 2016. He was sentenced to death. Being dissatisfied with the judgment on both conviction and sentence, the accused lodged an appeal No. 95 of 2016 in the Court of Appeal.
2. The Court of Appeal upheld the conviction and remitted the file to this court for resentencing under the *Francis K. Muruatetu* Supreme Court Petition eKLR (2017) principles.
3. The accused appeared before this court on 30/11/2022 whereas an advocate was appointed to represent him for purpose of sentencing. Ms Lucy Mwai was appointed to handle the task. The counsel filed submissions for mitigation and sentence.
4. In the defence submissions, the counsel relied on the principles in the Supreme Court *Muruatetu Petition* (*supra*) in regard to the factors to be considered by the court in sentencing in criminal cases.
5. In mitigation, it was submitted that the accused was a first offender, aged 67 years old and has five (5) siblings who will live with him after he is released from prison. The defence also acknowledged that the accused murdered his own father and that he inflicted very severe injuries on the deceased. A sentence of twenty years was proposed to commence from the date of arrest on 30/04/2008.
6. It is noted that the sentence in this case was imposed on the accused about one year before the *Muruatetu* petition was decided contrary to the impression given to the Court of Appeal.



7. This matter was decided during the pro-Muruatetu era as the Court of Appeal rightly pointed out. It is noted that the principles set out in the Muratetu case are applicable to all pro-Muruatetu murder cases.
8. From the mitigation of the accused, he is of advanced age of 67 years. He has spent eight (8) years in prison. Although this did not feature in the mitigation, the accused must have reformed and is probably remorseful of his horrid action that led to the death of his father. However, it is important to take into account the severe injuries inflicted all over the victim's body. He suffered multiple cuts and blunt injuries on the upper and lower limbs, fracture on the left hand (ulna and fibula). The deceased's had his four ribs fractured, five (5) cut wounds on the head and a comminuted fracture of the parietal bones. The cause of death was multiple injuries due to blunt and sharp force. Even if the deceased passed on the same day, he must have suffered great pain and trauma before he died. The murder was extremely horrific and must have left the close family members traumatized.
9. I have considered the factors given in mitigation and the proposal of sentence by the defence. I am of the considered view that the accused deserves a deterrent sentence even as he is resentenced due to the circumstances under which the offence was committed.
10. I hereby sentence the accused to serve thirty five (35) years imprisonment to commence from the date of arrest April 30, 2008.

DELIVERED, DATED AND SIGNED AT NYERI THIS 13TH DAY OF JULY, 2023.

F. MUCHEMI

JUDGE

Ruling delivered through video link this 13th day of July 2023

