



**Wanyeki v Republic (Miscellaneous Criminal Application E250 of 2018)
[2023] KEHC 19718 (KLR) (Crim) (6 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 19718 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS CRIMINAL APPLICATION E250 OF 2018
K KIMONDO, J
JULY 6, 2023**

BETWEEN

PETER KIBUE WANYEKI APPLICANT

AND

REPUBLIC RESPONDENT

(Arising from the High Court at Nairobi in Criminal Case No 34 of 2009.)

RULING

1. The applicant was convicted of murder contrary to section 203 as read with Section 204 of the [Penal Code](#) by the High Court sitting at Nairobi in Criminal Case No 34 of 2009. He was sentenced to death.
2. His appeal to the Court of Appeal at Nairobi in Criminal Appeal No 524 of 2010 was dismissed on July 8, 2011. However, the sentence of death has since been commuted to life imprisonment by His Excellency the President.
3. The applicant has approached the High Court for re-sentencing vide a Notice of Motion dated June 8, 2018. It is important to clarify that this is not a fresh appeal. It is in effect a petition for re-sentencing following the directions by the Supreme Court in [Francis Karioko Muruatetu & another v Republic](#), Consolidated Petitions Nos 15 & 16 of 2015 [2017] eKLR. The court declared that the death sentence has not been outlawed; but it is no longer mandatory. The learned judges held-

The mandatory nature of the death sentence as provided for under Section 204 of the Penal Code is hereby declared unconstitutional. For the avoidance of doubt, this order does not disturb the validity of the death sentence as contemplated under Article 26 (3) of the [Constitution](#). [Emphasis added]



4. The Supreme Court then gave the following directions-
 - (111) It is prudent for the same Court that heard this matter to consider and evaluate mitigating submissions and evaluate the appropriate sentence befitting the offence committed by the petitioners. For the avoidance of doubt, the sentencing re-hearing we have allowed, applies only for the two petitioners herein. In the meantime, existing or intending Petitioners with similar cases ought not approach the Supreme Court directly but await appropriate guidelines for disposal of the same. The Attorney General is directed to urgently set up a framework to deal with sentence re-hearing of cases relating to the mandatory nature of the death sentence - which is similar to that of the petitioners in this case.
5. The Supreme Court further directed the Attorney General, the Director of Public Prosecutions and other relevant agencies to prepare a detailed professional review with a view to setting up a framework to deal with sentence re-hearing. A report was to be submitted within 12 months of the judgment (now past).
6. The High Court thus has jurisdiction to re-sentence the applicant notwithstanding the lack of the framework by those government agencies. See *William Okungu Kittiny v Republic*, Court of Appeal at Kisumu, Criminal Appeal 56 of 2013 (2018) eKLR, *Michael Kathewa Laichena & another v Republic*, High Court, Meru, Petition 19 of 2017 [2018] eKLR.
7. The applicant relied on his written submissions filed on December 28, 2021. He has been in prison for over fourteen (14) years. He claims to have reformed and become a devout Christian; that he has introspected and accepted that he committed a heinous crime and seeks forgiveness from the victim's family. He begs for a second chance to rebuild his life and that of his family. While in prison, he has also studied several courses including a certificate in soap and detergent making.
8. The learned prosecution counsel, relied on the written submissions dated January 25, 2023. She did not oppose the application for re-sentencing but implored the court to take into account all the aggravating circumstances and deliver a deterrent sentence.
9. In the original trial at the High Court, the applicant tendered his mitigation. The sentence meted out was a mandatory one then. The learned Judge, (Lesiit J), as she then was, stated as follows-

There is only one sentence provided in the law for this offence. However, I have considered the circumstances of this offence and I find them really bad.

First the accused took away a wife from the father of the deceased. Second he took away a life, an only child (surviving) of the couple whose marriage he participated in breaking. In addition, the accused lured the deceased to the scene and then continuously and severely landed blows on his head with a heavy twisted metal.

I do not think that there is any reason to give mercy to the accused. If anything his conduct and actions leading up to the day in question was aggravated and even if the court had discretion in issues of sentence, I think the circumstances would still call for the severe or heavy sentence. I sentence the accused to death as provided by the law. He has a right of appeal within 14 days of today.
10. I must point out that the Supreme Court decision in *Muruatetu* case [*supra*] did not outlaw the death penalty, but it left the court with discretion to impose a lighter sentence. I am well guided by the recent



decision of the Court of Appeal in *Mukhwana Lingodo v Republic*, Eldoret Criminal Appeal No 29 of 2017 [2019] eKLR where the Court held:

As regards the sentence, the appellant was sentenced to death. Although this court has in numerous decisions applied to robbery with violence cases the decision for the Supreme Court in *Francis Karioko Muruatetu v Republic* [2017] eKLR that death sentence is not mandatory, the death sentence is deserved in the circumstances of this case. The appellant not only robbed the deceased of his motor vehicle and stole his money but also killed him in an extremely cruel manner.

11. Granted all the aggravating circumstances summarized by the learned trial judge at the applicant's trial captured in paragraph 9 of this ruling, and doing the best that I can, I hereby set aside the original sentence of death. I now resentence the applicant to serve 30 (thirty) years in prison. The sentence shall run from December 16, 2010, the date of his original conviction by the High Court. Furthermore, and in accordance with section 333 (2) of the *Criminal Procedure Code*, the period spent in remand custody from the date of his arrest to the date of his original conviction shall be deducted from the sentence.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 6TH DAY OF JULY 2023.

KANYI KIMONDO

JUDGE

Ruling read virtually via Microsoft Teams in the presence of-

The applicant (in person).

Ms. Oduor for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. E. Ombuna, Court Assistant.

