



**Enoi v Republic (Petition 13 of 2019)
[2023] KEHC 23115 (KLR) (21 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 23115 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
PETITION 13 OF 2019
REA OUGO, J
SEPTEMBER 21, 2023**

IN THE MATTER OF ARTICLES 22(1) OF THE CONSTITUTION

AND

**IN THE MATTER OF ARTICLES 23,25 (A) , (C), 27 (1) (2) ,
28, 20(1),50 (2) (Q), 19 (1) (2) 165 OF THE CONSTITUTION**

AND

IN THE MATTER OF SECTION 203 AS READ WITH SECTION 294 OF THE PENAL CODE

BETWEEN

ABDUL LONGOLAN ENOI PETITIONER

AND

REPUBLIC RESPONDENT

JUDGMENT

1. In Petition filed on the February 25, 2019 Abdul Longolan Enoi the petitioner depones that; he was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code* in HCCRC No 37 of 2006. His death sentence was commuted to life sentence by the President in the year 2009. He has been in custody for the last 12 years since his arrest and that based on the Supreme Court ruling made on the December 14, 2017 the death sentence awarded on him is unconstitutional.
2. In a notice of motion filed simultaneously with the petition the petitioner seeks orders of revision of sentence in respect of the murder case in HCCRC No 37 of 2006.
3. The petitioner filed written submissions on the January 15, 2023. I have read and considered the said submissions. He seeks a review of his sentence and relies on the case of *Francis Karioko Muruatetu & Another vs R* (2016) eKLR where it was held that the mandatory death sentence deprives the courts legitimate jurisdiction to exercise discretion to individualize an appropriate sentence to the relevant



aspects of the character and record of each accused persons hence unconstitutional. That his rights under Article 25(2) (1), 28 and 50 (2) (q) of the Constitution were contravened and that he should be allowed to mitigate under section 329 of the C.P.C Cap.75. He submits further that he was 32 years old at the time of his arrest and that he was a first offender he is remorseful and repentant. That during his imprisonment term he has maintained high discipline towards his inmate and staff. That he is the sole breadwinner to his family who are now helpless due to his absence. That the court should consider the pre-trial period in custody under section 332 (2) of the Penal Code.

4. The application was opposed. Mr. Ayekha for the respondent submitted that the petitioner has not filed an appeal to the higher court as a matter of procedure. That he should have appealed. That on that basis the court cannot review the sentence from a concurrent court. That the sentence was proper in law.
5. Although the respondent submits that the petitioner should have appealed. The Supreme Court in the case of Francis Murnatetu (Supra) (Directions) stated as follows at paragraph 16 (b), ‘ All offenders subject to the mandatory death penalty , including those convicted and sentenced prior to 2010, who are serving commuted sentences, will be eligible for re-sentencing including all offenders sentenced to death as at the time of the decision was made on December 14,2017.’
6. The petitioner was sentenced to death after a full trial on the September 22, 2010. He seeks re-sentencing. He is eligible to re-sentencing. In his petition he has stated his mitigation.
7. I have considered the following; the age of the offender, he is remorseful, what is stated in the petition on his character. I have also considered the manner in which the offence was committed. The petitioner tortured the deceased before her death her toe nails were plucked off and she had several bodily injuries on several parts of her body. She died a painful death. I set aside the life sentence and re-sentence the petitioner Abdul Longolan Enoi to twenty-five (25) years imprisonment. In computing the sentence, the period, he was in remand and what is already served shall be taken into. He has a right of appeal within 14 days.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 21ST DAY SEPTEMBER 2023.

R.E.OUGO

JUDGE

In the presence;

Abdul Longolan Enoi/Petitioner - Present

Mr. Ayekha For the Respondent/State

Wilkister /Okwaro C/A

