



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wakora v Republic (Constitutional Petition 34 of 2019)  
[2023] KEHC 23074 (KLR) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 23074 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CONSTITUTIONAL PETITION 34 OF 2019  
REA OUGO, J  
SEPTEMBER 21, 2023  
FROM ORIGINAL H.C.C.R CASE NO. 2 OF 2012 AT BUNGOMA**

**BETWEEN**

**PETER KUNDU WAKORA ..... PETITIONER**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Peter Kundu Wakora, the petitioner, through a notice of motion filed on the May 19, 2023 seeks an order of re-hearing of the sentence imposed against him. His application is supported by his affidavit attached to the application. He depones as follows; he was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code* and sentenced to death which was later commuted to life sentence by the President of the Republic of Kenya. That he was not accorded a fair trial of sentencing from the trial court to the last Court of Appeal thus contravening article 50 (2) (q) of the *Constitution*. He relies on the following cases; *Douglas Muthaura Ntoribi* Misc Appl No 4 of 2015 at Meru High Court; *John Nganga Gacheru and another* HCCR No 31 of 2016 at Kiambu High Court and the case of *Francis K. Muruatetu and another v Republic* (Supreme Court petition No 15 of 2015) the court held that the death penalty was unconstitutional. He is therefore seeking an appropriate sentence.
2. The application was opposed by the respondent.
3. The petitioner filed mitigation submissions. In his submissions he states that he is remorseful and regrets having participated in the crime. He seeks re-sentencing and seeks a lenient sentence. He has undergone rehabilitation programs. That he was arrested in 2012 and convicted in December 2016. He has been in custody over 11 years. That the commission of the offence was brought about by anger at being swindled, he was angry because the child had eaten his meal and he had nothing to eat. That he was only discipling the minor. That he was barely 18 years at the time he committed the offence and



had just married and had been blessed with 3 children. He has no past criminal records. He does not pose danger to the society and he will not repeat the same offence. That he is ready to be reintegrated into the society. Prisons has transformed his life. He has a diploma in biblical studies. That his appeal in the court of appeal has not been heard. That he is willing to withdraw his appeal and continue with his application for re-sentencing.

4. Mr Ayekha for the respondent submitted that they oppose the application. A life was lost of a very young person. The deceased was beaten and buried in a hole where she suffocated to death. The applicant has a life sentence. The life cannot be restored. He should serve his sentence.
5. The petitioner's counsel informed the court that the petitioner has never filed an appeal in the Court of Appeal and that it is his co-accused who filed the appeal.
6. The Supreme Court in the case of *Francis Muruatetu* (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.'
7. The petitioner was sentenced to death after a full trial on the December 1, 2016. He was charged in 2012. He seeks re-sentencing. He is eligible to re-sentencing. In his petition he has stated his mitigation in detail.
8. I have considered the following; the age of the offender, that he is remorseful, what is stated in the mitigation on his character. I have also considered the manner in which the offence was committed. The deceased aged 4 years was found dead having been buried head down in a banana hole 2ft deep half way full. The deceased had bruises on the central part of the forehead and the right-hand soil particles in the nostrils, heart, liver and stomach. The doctor formed the opinion that she died due to suffocation. The deceased died a painful death. Bearing all this in mind I set aside the life sentence and re-sentence the applicant Peter Kundu Wakora to serve thirty (30) 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 21<sup>ST</sup> DAY OF SEPTEMBER 2023.**

**R.E.OUGO**

**JUDGE**

