



REPUBLIC OF KENYA



**Ekisa v Republic (Criminal Petition E007 of 2022)  
[2023] KEHC 23409 (KLR) (13 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23409 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
CRIMINAL PETITION E007 OF 2022  
WM MUSYOKA, J  
OCTOBER 13, 2023**

**BETWEEN**

**KAITANO EKISA ..... PETITIONER**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Motion, undated, principally seek re-sentencing. The petitioner had been convicted, in Busia HCCRC No. 27 of 2010, of murder, contrary to section 203, as read with section 204, of the [Penal Code](#), Cap 63, Laws of Kenya, which attracts, upon conviction, a penalty of mandatory death, and the trial court had imposed that sentence, on 24<sup>th</sup> February 2014. His appeal to the Court of Appeal, in Kisumu HCCRA No. 67 of 2014, was withdrawn, as per the court record of 6<sup>th</sup> May 2021.
2. The application rides on the decision in [Francis Karioko Muruatetu & another vs. Republic](#) [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki & Lenaola, SCJJ), where the court laid down a general principle that all mandatory sentences were unconstitutional, and allowed trial and appellate courts discretion to re-visit cases where mandatory sentences had been imposed, with a view to revising or reviewing them. The Supreme Court re-visited the issue, in [Francis Karioko Muruatetu & another vs. Republic; Katiba Institute & 5 others \(Amicus Curiae\)](#) [2021] eKLR (Koome CJ&P, Mwilu DCJ&VP, Ibrahim, Wanjala, Njoki, Lenaola & Ouko, SCJJ), and stated that its decision in [Francis Karioko Muruatetu & another vs. Republic](#) [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki & Lenaola, SCJJ) was of application only in murder cases.
3. As the mandatory sentence for murder cases has been pronounced unjust and unconstitutional, by the Supreme Court, in [Francis Karioko Muruatetu & another vs. Republic](#) [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki & Lenaola, SCJJ), then it stands that the sentence imposed on the petitioner herein is no longer tenable. I hereby set it aside.



4. Subsequent to setting aside that sentence, I have to consider the alternative sentence that I should impose. The offence of murder is a felony, so grave that the Republic assigned to it the mandatory penalty of death, to underscore how heinous and abhorrent it is. A life was lost. Families were left grieving, for the rest of their lives. A deterrent sentence is called for, and imprisonment would be the most ideal, to keep the offender away from the society, to deter him and secure the community, and to give him an opportunity to reform and to be rehabilitated.
5. The offence of manslaughter attracts a penalty of up to life in prison. With *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki & Lenaola, SCJJ), the penalties for manslaughter and murder now overlap. To complicate matters, the Court of Appeal, in *Julius Kitsao Manyeso vs. Republic* Malindi CACRA No. 12 of 2021 (Nyamweya, Lesiit & Odunga, JJA), declared life imprisonment unconstitutional too. That would mean that I have to ascertain and fix a definite sentence of imprisonment.
6. From the trial record, none of the witnesses saw the petitioner attack and fatally injure the deceased. His conviction was based purely on circumstantial evidence. Taking everything into account, I hereby impose an imprisonment sentence on the petitioner of 35 years. The time spent in custody shall be reckoned in the calculation of sentence. Plea was taken on 14<sup>th</sup> December 2006. The petitioner was convicted and sentenced on 24<sup>th</sup> February 2014. He remained in remand custody throughout his trial. The Deputy Registrar shall cause a certified copy of this ruling to be placed in the trial file, in Busia HCCRC No. 27 of 2010. If that file is not available, a skeleton file shall be created for that purpose.
7. Orders accordingly.

**RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS.....  
13<sup>TH</sup> .....DAY OF .....OCTOBER.....2023**

**WM MUSYOKA**

**JUDGE**

**MR. ARTHUR ETYANG, COURT ASSISTANT.**

**APPEARANCES**

**KAITANO EKISA, THE PETITIONER, IN PERSON.**

**MRS. CHEKONGA, INSTRUCTED BY THE DIRECTOR OF PUBLIC PROSECUTIONS, FOR  
THE RESPONDENT.**

