



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

MISC. APPLICATION NO. 40 OF 2019

FROM COURT OF APPEAL NO. 212 OF 2002

AT NYERI

ORIG. CR. CASE NO. 19 OF 1998 AT NYERI

IN THE MATTER OF RE-HEARING OF SENTENCE UNDER ARTICLE 22(1),(1)(3)/2(4),  
19(3)25,26,27(1)28,29,50(2)(q), 160(1),159(1)165(3)(b) OF THE CONSTITUTION OF KENYA  
AND SECTION 261 OF THE CRIMINAL PROCEDURE CODE CAP 75 LAWS OF KENYA

JACOB NJUKI WARUI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

**RULING**

1. This ruling in this application seeking for orders for resentencing filed on 14/10/2019.
2. The applicant was charged with murder in Nyeri High Court Criminal Case No. 1 of 1998 and sentenced to death. He relies on the Supreme Court Petition of **Francis Karioko Muruatetu** where the court declared the mandatory nature of death sentence unconstitutional and directed convicts affected by the said death sentence to apply to court for orders of resentencing.
3. It is noted that apart from furthering his education while in prison to Kenya Certificate of Primary education (KCPE) and Kenya Certificate of Secondary education (KCSE), the applicant has participated in other courses. He participated in a course organized by Mount Kenya University partnering with Kenya National Commission for UNESCO between 2017 and 2019 where he learnt skills of a teacher for mature learners.
4. The chaplain of Naivasha prison where the applicant has served sentence of twenty(20) years since conviction has given a good report of the applicant. I have perused the victim impact report which has no negative information on the accused and his character. The report however raises concern that though they do not object to the release of the applicant, the deceased's family is apprehensive that the applicant if released may re-victimise the family of the deceased.
5. In my considered view, I rule out any re-victimisation by the applicant given the reforms he has achieved while in prison. However, the applicant is subject to the law and if he attempts to break the law, he will be dealt with accordingly.
6. The record from prison shows a person who has completely reformed and who is ready to go and start his life afresh. This court advises the accused to go and seek forgiveness and reconciliation with the family of the deceased.
7. This petition is brought under the **Francis Muruatetu Supreme Court Petition**. The principles therein mainly deal with the mandatory nature of death sentence prescribed for the offence of murder under Section 204 which the Supreme Court declared unconstitutional. This court has power to hear this petition and make the orders sought.
8. At the time the petitioner was sentenced, he was not given a chance to mitigate because death was the only sentence authorised by the law.

9. I have considered the mitigation of the petitioner in this petition to the effect that he has reformed and furthered his education as well as undergoing other courses. The victim impact report has no negative information on the petitioner.

10. It is my considered view that the petitioner deserves orders for resentencing. I hereby allow this petition and make the following orders:-

. That the death sentence imposed in Nyeri High court Criminal Case No. 1 of 1998 is hereby set aside and substituted with the period of twenty-five (25) years imprisonment.

b. The petitioner has already served twenty(20)years imprisonment and I hereby order that the balance of the sentence will be served on probation.

c. The petitioner is hereby placed on probation for a period of two (2) years.

11. It is hereby so ordered.

**DELIVERED, DATED AND SIGNED AT NYERI THIS 16<sup>TH</sup> DAY OF MARCH, 2021.**

**F. MUCHEMI**

**JUDGE**

**Ruling delivered through video link this 16<sup>th</sup> day of March 2021**