



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**CRIMINAL PETITION NO 24 OF 2019**

**(From original Conviction and Sentence in Criminal Case No. HCR 35 OF 2010 at Kitale)**

**JAMES WAFULA BARASA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The Applicant, **James Wafula Baraza** was convicted of **Murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The court found as a fact that the prosecution had established the charges that were brought against the Applicant that he caused the death of the three victims with malice aforethought. The three victims were, respectively, his wife and children. The circumstances that led to the death of the victims, according to the judgment of the court, was that the Applicant, being annoyed that his wife had left the matrimonial home for her parent's home, followed her to her parents' home and set the house on fire the house that that she and the children were in. The victims sustained fatal injuries. After convicting the Applicant the court (J.R. Karanja J) sentenced the Applicant to suffer death.

The Applicant indicates that he has not filed an appeal to the Court of Appeal. He has moved the court pursuant to the Supreme Court's decision of **Francis Korioko Muruatetu -Vs- R [2017] eKLR** for resentencing. He told the court that at the time of sentencing him, was of the view that the only sentence that could be meted on him was the death sentence. He pleaded with the court to sentence him to serve an alternative but lenient sentence. He urged the court to give him a second chance at life so that he can take care of his children. During his incarceration, he had learnt a lot of courses that will make him a useful member of the society if he is released. Such courses include, Bible Studies, and fighting drug abuse. He pointed out that he had been in lawful custody since 9<sup>th</sup> June 2012. He urged the court to allow his application. Mr Omooria for the Prosecution was not opposed to the court exercising its discretion appropriately.

In the **Muruatetu case** (Supra), the Supreme Court held that among the factors to be considered when determining an application for resentencing includes; the age of the offender; whether the offender was a first offender; whether the offender pleaded guilty; character and record of the offender; commission of the offence in relation to gender based violence; remorsefulness of the offender; the possibility of reform and social re-adaptation of the offender; and any other factor that may be considered relevant.

In the present application, it was clear to the court that the Applicant committed a serious offence. The Applicant was not only a perpetrator of gender based violence, after causing his wife to flee from the Matrimonial home, he followed her to her parent's home where he committed the offence. Apart from killing his wife and two of their children, he set ablaze his parents' in law house thus causing them financial ruin. The Applicant says he has reformed; that he should be given a second chance at life and that he is remorseful and has learnt many courses in Prison that will make him a better person if he is released back to the society. This court is not convinced that the period that the Applicant has been in prison is sufficient punishment for the offences that he committed. He has not yet paid his just debts to the society.

In the premises there, the Applicant's application will succeed only to the extent that his sentence of death shall be set aside and substitute a sentence of this court sentencing the Applicant to serve a custodial term of **thirty five (35) years**. The sentence shall take effect from 9<sup>th</sup> June 2012 when he was placed in lawful custody as he awaited his trial.

It is so ordered.

**DATED AT KITALE THIS 10<sup>TH</sup> DAY OF MAY 2021.**

**L. KIMARU**

**JUDGE**