



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**

**MISC.APPL NO.314 OF 2018**

**HESBON KIPLANGAT NGETICH.....APPLICANT**

**-VERSUS-**

**REPUBLIC.....RESPONDENT**

**RULING**

1. This is a ruling on application for resentencing. The applicant had been charged and convicted of the offence of **murder contrary to section 203 as read with section 204 of the Penal Code**. Particulars are that, on 7<sup>th</sup> February 2008 at Olenguruone Township in Kuresoi District within Rift Valley Province, jointly with another not before court, murdered **Abraham Kiplangat Rono**. He was sentenced to death. He withdrew his Appeal No.26 of 2014 in the Court of Appeal on 17<sup>th</sup> September 2020 and opted to proceed with this resentencing application.

2. The applicant stated that he is aware that he committed a wrong and that it was not his wish to commit an offence but it was because of over drinking alcohol. He said he resolved to reform on being sentenced and that he has been in prison for 10 years now. He said he has repented and accepted Jesus. He said he has done training in the bible and carpentry and joinery; and has obtained Grade 3 certificate. He produced in court certificates to confirm training.

3. The applicant stated that he wishes to be reunited with his family and he will not repeat the offence again. He said he was 22 years old when he was arrested and he is now 33 years old and that his mother died while he was in prison; he urged court to release him to help his remaining parent. He sought forgiveness from court.

4. The applicant relied on the case of **Francis Karioko Muruatetu Vs Republic [2017] eKLR** to argue that the mandatory sentence imposed by the trial Court and upheld by the High Court and Court of Appeal is excessive and harsh and sought an appropriate sentence.

5. In response **Ms. Rita Rotich** for the state opposed the application and urged Court to consider aggravating circumstances and the significant loss and trauma occasioned and that applicant has not made efforts to reconcile and seek forgiveness from the family of the deceased.

6. In a rejoinder, the applicant sought forgiveness from the people he has wronged.

**ANALYSIS AND DETERMINATION**

7. The applicant herein was sentenced to death which was later commuted to life imprisonment. The sentence imposed was the mandatory sentence provided by statute. Mandatory nature of sentences was however declared unconstitutional by Supreme Court in **Francis Karioko Muruatetu Vs Republic [2017] eKLR** where the Supreme Court declared mandatory nature of sentences unconstitutional as it takes away the discretion of the trial Court to determine sentence to impose upon considering circumstances of the case and mitigating factors of the offenders. The Supreme Court found that the taking away of discretion of the Court renders the mitigating factors superfluous.

8. There is no doubt that the offence committed by the applicant was serious and he deserved deterrent sentence. I however note that the applicant has taken advantage of the imprisonment and improved himself being undertaking trainings in carpentry and biblical studies. He has also taken time to reflect on his actions and has shown remorse from the offence he has committed. He has been in prison for 10 years now. He is 33 years old now. He has gained skill that will benefit him, his family and the community around him. In my view, he deserves a definite jail term where upon completion, he may be released to build himself and contribute to the community. I find it appropriate to reduce his sentence to 20 years' imprisonment. The sentence to run from the time of sentence by the trial court.

**9. FINAL ORDERS**

1. Sentence is reduced to 20 years' imprisonment.

2. The sentence to run from the date of sentence by the trial court.

**RULING DATED, SIGNED AND DELIVERED VIA ZOOM AT NAKURU THIS 9<sup>TH</sup> DAY OF JUNE, 2021**

.....

**RACHEL NGETICH**

**JUDGE**

**In the presence of:**

Jeniffer - Court Assistant

Applicant in person

Rita for State