



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**MISC.APPL NO.217 OF 2018**

**MICHAEL KAMAU.....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, in June 2002 at Njoro District within the Rift Valley Province, the applicant murdered **Nathan Kamau** and **Esther Wangare**. He was sentenced to death. His appeal to the Court of Appeal was dismissed. His sentence was later commuted to life imprisonment. At the time of making this application, he had served 19 years' imprisonment.

2. The applicant stated that he is sickly and sought forgiveness and urged this court to reduce his sentence.

3. In his mitigation, 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.

4. He submitted that after a thorough soul searching and reflection, he takes full and personal responsibility for the crime he committed; that he has undergone punishment, repercussions and felt the effects of the offence over 18 years he has been in custody.

5. The applicant has served in custody has given him opportunity to reform his entire life. He stated that he was 27 years old at the time of the offence and he had a young wife with one child whose livelihood are still uncertain to date. He said he is now 46 years old and he is very concerned about the life of his family; he stated that his parents passed on while he was in prison.

6. In response **Ms. Rita Rotich** for the state opposed the application and urged Court to consider aggravating circumstances. She submitted that there was use of crude weapons causing psychological trauma; and there has been no effort by the applicant to reconcile with victims. She said the victim was cut with a panga and the sentence imposed against the applicant was deterrent. She added that the applicant has not made any retribution or had any reconciliation with the victim.

7. In a rejoinder, the applicant stated that he agrees that he committed the offence but he has suffered in prison and that he has no family members apart from a sister. He sought forgiveness from court and the people he wronged

**ANALYSIS AND DETERMINATION**

8. 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.

9. There is no doubt that the offence committed by the applicant was serious and he deserved deterrent sentence. I however note that the applicant took imprisonment positively and has taken time to reflect on his actions. He has shown remorse from the offence he has committed. He has been in prison for 19 years now. He is 46 years old now; it is unlikely that he will engage in crime again. I believe he deserves an opportunity to reinvent himself and live a peaceful and meaningful life. I find it appropriate to reduce his sentence to 25 years' imprisonment. The sentence to run from the time of sentence by the trial court.

**10. FINAL ORDERS**

- 1. Sentence is reduced to 25 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 9TH DAY OF JUNE, 2021**

**RACHEL NGETICH**

**JUDGE**

**In the presence of:**

Jeniffer - Court Assistant

Applicant in person

Rita for State