

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

PETITION NO. 19 OF 2019

EVANS WANJAMA MBUTHIA.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

JUDGEMENT

1. The petitioner has approached this court for orders of sentencing relying on the Supreme Court Petition **Francis Karioko Muruatetu No. 15 of 2015.**

2. The background facts are the petitioner was charged in Nyeri High Court Criminal case No. 6 of 2005 with two counts of the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. He was convicted and sentenced to death. He appealed in Court of Appeal in Criminal Appeal No. 144 of 2007 which appeal was dismissed.

3. The victims of the crime are two young children aged eight 8 and six(6) years respectively and who were brother and sister. The parents of the children testified in court of how the children left school on the material day and were served with lunch at their home. The children then left home and went to the house of the accused who was previously married to their aunt. The petitioner had met them earlier on their way from school and told them to go to their home and remove the school uniform and then go to his place. The children after visiting the petitioner did not return home and their bodies were discovered dumped in a bush. The post-mortem report revealed that they died of asphyxia due to strangulation and that both had been sexually assaulted before being killed.

4. The petitioner was arrested and blood stained clothes with matching blood group of the first deceased were recovered from his house.

5. The petitioner pleads with the court to give him a reduced sentence for he has reformed while in prison and undergone courses including shoe-making Grade 1 that could help him start a living if released. He also attached a recommendation letter purportedly from the officer in charge Nyeri Maximum Prison. The letter was allegedly authored by one Yusuf K. Kaitopok but not signed. It recommended the petitioner for alternative or reduced sentence on ground that he has reformed and is a responsible person who has been in prison custody for fourteen(14) years since 2005.

6. The prosecution said the probation report contained mitigating factors though the community on the ground is still hostile. He urged the court to give the petitioner thirty years imprisonment considering the seriousness of the offence.

7. The probation officer's report filed on 26/01/2021 stated that after interviewing the immediate family of the petitioner, they said they were ready to receive him and assist him to settle. However, the mother of the deceased persons together with her family expressed a lot of pain and bitterness regarding the murder of the young children. The mother of the deceased is still trying to cope with the loss that she suffered. The rest of the community are hostile and did not want the petitioner released. In summary, except the petitioner's own family, the community and the victims are not ready to forgive and reconcile with the petitioner.

8. Taking into consideration, the circumstances of the offence which involved the 1st deceased being sodomised and the 2nd deceased defiled before being strangled, I am of the view that the acts of the petitioner were very cruel. These were children of tender years and who knew the petitioner well since he was a neighbour and a relative through marriage to their aunt. It sends chills in the spine to think of the traumatic impact of the crime to their parents. The two will take forever to recover from the said trauma and the loss.

9. Having considered the said factors, I do not find the petitioner deserving review of sentence.

10. It is important to note that the Supreme Court in the **Muruatetu** petition did not outlaw death sentence. The said sentence is still available under Section 204 of the Penal Code.

11. Consequently, I find no merit in this petition and I dismiss it accordingly. The petitioner will continue to serve the sentence imposed by the trial court.

12. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT NYERI THIS 8TH DAY OF JULY, 2021.

F. MUCHEMI

JUDGE

Judgement delivered through video link this 8th day of July, 2021.