REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

MISC. CRIMINAL APPLICATION NO.97 OF 2019

JOHN MAINA KRITHA....................APPLICANT

-VERSUS-

REPUBLIC..RESPONDENT

RULING

1. The Applicant **John Maina Kritha** was charged with the offence contrary to **section 203 as read with section 204 of the penal code**. Particulars are that on the 2nd day of April 2009 at Kabazi in Nakuru North District of the Rift Valley Province, he murdered **Mineh Wangui**. From the record the deceased was the Applicants wife and both had 2 children.

2. The applicant denied the charge and the case proceeded for hearing. Judgment was delivered by **Justice M. J. Anyara Emukule** on 18th day of December 2014. He sentenced the applicant to 45 years' imprisonment on the same day. In his ruling on sentence he noted that the punishment for the offence of murder was death but in light of **Article 26 of the constitution** which uphold the accused's right to life he imposed sentence of 45 years' imprisonment.

3. I note from **Justice Emukule's** ruling on sentence that he exercised discretion in sentence before the Supreme Court declared in **Muruatetutu** declared mandatory nature of sentences unconstitutional.

4. The supreme court in directions issued on 6th July 2021 in the case **Francis Karioko Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae) [2021] eKLR** as follows: -

> **"Having considered all the foregoing, to obviate further delay and avoid confusion, we now issue these guidelines to assist the Courts below us as follows:**
>
> **The decision of Muruatetu and these guidelines apply only in respect to sentences of murder under Sections 203 and 204 of the Penal Code;**
>
> **The Judiciary Sentencing Policy Guidelines to be revised in tandem with the new jurisprudence enunciated in Muruatetu;**
>
> **All offenders who have been subject to the mandatory death penalty and desire to be heard on sentence will be entitled to re-sentencing hearing.**
>
> **Where an appeal is pending before the Court of Appeal, the High Court will entertain an application for re-sentencing upon being satisfied that the appeal has been withdrawn.**
>
> **In re-sentencing hearing, the court must record the prosecution's and the appellant's submissions under Section 329 of the Criminal Procedure Code, as well as those of the victims before deciding on the suitable sentence.**
>
> **An application for re-sentencing arising from a trial before the High Court can only be entertained by the High Court, which has jurisdiction to do so and *not* the subordinate court."**

5. In view of the supreme court above directions, it is clear that it is only in murder cases where the judicial officer can exercise discretion to impose sentence other that death sentence provided by statute.

6. The applicant having been convicted of the offence of murder would have benefited from the supreme court directions but the trial judge already exercised discretion while sentencing him on 18th December 2014.Article 165(6) provide as follows: -

> **“(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.”**

7. The above constitutional provision gives the High Court powers to review decisions of the subordinate court but not its own decisions or decisions of superior courts. I do not therefore have jurisdiction to revise sentence imposed on the applicant herein as it will amount to revising the trial judge’s decision.

8. The applicant is at liberty to seek revision of the sentence in the court of Appeal.

9. **<u>FINAL ORDER</u>**

1. **Application for resentence is hereby dismissed**.

Ruling dated, signed and delivered via zoom at Nakuru

THIS 21ST DAY OF JULY, 2021

……………………

RACHEL NGETICH

JUDGE

<u>In the presence of</u>:

Schola/Jeniffer - Court Assistant

Applicant in person