



**REPUBLIC OF KENYA**

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

**PETITION NO. 5 OF 2018**

**PETER IRUNGU MAKURATHI.....PETITIONER**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**JUDGEMENT**

1. This is a petition seeking for orders for resentencing relying on the Supreme Court Petition of **Francis Karioko Muruatetu & Another Versus Republic No. 5 of 2015** in which the apex court declared unconstitutional the mandatory nature of death sentence under Section 204 of the Penal Code.
2. The background facts are that the petitioner was convicted of the offence of murder by Nyeri High Court in Criminal case No. 114 of 2003 contrary to Section 203 as read with Section 204 of the Penal Code and was sentenced to death. Being dissatisfied with the judgement, the petitioner lodged his appeal to the Court of Appeal sitting at Nyeri which was dismissed.
3. The Supreme Court opened a window for murder convicts to petition for re-sentencing before the High court in pursuance with the judgment in the said petition. The apex court also found that the courts in criminal cases ought to exercise their discretion in sentencing after hearing the accused in mitigation as well as considering all the factors set out in that decision and in the Judiciary Sentencing Policy.
4. The record of the High Court shows that the petitioner was convicted by the court upon the summing up by the assessors who recommended that the evidence proved the offence of murder. The petitioner did not get an opportunity to mitigate on sentence. His advocate said he would not offer any mitigation “since the hands of the court are tied” It is therefore necessary that the mitigation of the petitioner herein be taken into consideration before re-sentencing.
5. The petitioner states that he was convicted on 26/05/2004 and has been in prison for over twenty (20) years including the period he spent in custody pending trial. He states that while in prison, he has reformed and turned to Christ accepting him as his personal saviour. He has studied several courses during the period of incarceration. These include tailoring, dress- making, attained Diploma in theology AFCM and TEE and undergone a basic course in modern farming.
6. The trainings are confirmed by the Officer in-charge of Nyeri Maximum Prison in his letter dated 30/07/2019. The officer adds that the petitioner has “embraced correctional core values of reformation and rehabilitation, hence considered a person who can integrate well with the outside world.”
7. The re-sentencing report indicates that the petitioner is willing to seek forgiveness from the mother of the victim who is his sister. His other sister Grace and his brother Washington were of the view that petitioner has suffered enough in custody and that since he has apologised to the victim’s mother he can be released. They are ready to welcome him home and help him to integrate in society.
8. This court cannot lose sight on the fact that the petitioner slashed a young boy who was his nephew to death. This was very traumatising to the victim’s mother who is still bitter despite the apologies sent to her by the petitioner. A life of a young person was lost for no good cause in this petition.
9. I have considered all the above factors and the period of about eighteen years spent in incarceration and I am of the considered view that the petitioner deserves orders sought for review of sentence.
10. The death sentence is hereby set aside and the petitioner is hereby resentenced to serve to twenty five(25) years imprisonment to run from 26/05/2004 when he was arrested.
11. The petition stands allowed.
12. It is hereby ordered.

**DELIVERED, DATED AND SIGNED AT NYERI THIS 8<sup>th</sup> DAY OF JULY, 2021.**

**F. MUCHEMI**

**JUDGE**

**JUDGEMENT DELIVERED THROUGH VIDEO LINK THIS 8TH DAY OF JULY, 2021.**