

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

MISC.CRIMINAL APPLICATION NO. 295 OF 2018

PAUL NGANGA KAMUNGE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGEMENT

1. The applicant had been charged and convicted for the offence of murder under the provisions of **Section 203 as read with Section 204 of the Penal Code**. He was thereafter sentenced to suffer death.
2. The applicant seemed not to have preferred any appeal. In line therefore with the Supreme Court of Kenya decision in the case of **Francis Muruatetu & another v. rep. (2017) eKLR**, the applicant seeks that this court resentence him afresh. He says that he is remorseful and has learned valuable lessons in his stay in custody.
3. He therefore prays that the court does consider the period he has spent in custody under the provisions of **Section 333(2) of the Criminal Procedure Code** and the fact that he has been rehabilitated. As of now he has undergone training as a carpenter, a barber and can do joinery. He backed up the same vide some attachments in support.
4. The learned state counsel did not oppose the application save to add that the court should take into consideration the gravity of the matter and specifically the fact that the deceased suffered a violent death. The single stab wound on the neck was severe and he died in great pain.
5. The court has considered the applicant's mitigation, the authorities cited and specifically the principles by the Supreme Court in the **Muruatetu case** and other subsequent authorities flowing thereafter.
6. The court takes the view that the punishment of death meted against the applicant was proper in the circumstances as per the law established. Flowing however from the **Muruatetu case** the same may not be efficacious as other means of punishment can now be considered.
7. It is true that the deceased died as a result of a single stab on the neck. There was no reason why the applicant assaulted him. To date no reason has been advanced as to why he assaulted him. He deserves justice which indeed the court has done.
8. Incarcerating the applicant for life will not bring back the deceased. There is therefore need to temper justice and mercy when circumstances permit. I find that the applicant was a first offender and from his submissions he appears remorseful. He has been in custody since when he was first arraigned in court on 30th April 2013. This period under the provisions of **Section 333(2) of the Criminal Procedure Code** has to be taken into consideration.
9. Taking both the interest of the applicant as well as the respondent this court sets aside the sentence of death imposed against the applicant and substitute it with a custodial sentence of **Twenty-two (22) years from 30th April 2013**.
10. Orders accordingly.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAKURU THIS 1ST DAY OF JULY 2021.

H K CHEMITEI

JUDGE