



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CRIMINAL MISC APPLICATION 212 OF 2018

BENARD KIPKEMOI SIELE.....APPLICANT

VERSUS

REPUBLIC.....PROSECUTION

RULING

1. The accused **Benard Kipkemoi Siele** was charged with the offense of **murder contrary to section 203 as read together with section 204 of the penal code.**
2. He pleaded not guilty and the matter proceeded for trial. He was convicted for the offence of murder and sentenced to 45 years in the year 2014.
3. The accused testified that he was 24 years when he was sentenced in the year 2014 and was jailed for 45 years. He has been in prison for 12 years and seeks the court to consider the 5 ½ years she spent in remand. He is currently 36 years. He stated that while in prison he has been trained as a mechanic.
4. In response, the prosecution opposed the resentencing and urged this court to consider aggravating circumstances being use of crude weapons in the committing the offense, and submitted that sentence of 45years was commensurate to the offence which was meant to deter other offenders. She urged this court to consider the impact of the offence on the victim's family and there has been no reconciliation or remorse by the applicant. She urged this court to uphold the sentence.

ANALYSIS AND DETERMINATION

5. In respect to mandatory nature of death sentence, the Supreme Court issued directions 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 a 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of Appeal, the High Court will entertain an application for re-sentencing upon being satisfied that the appeal has been withdrawn.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 a 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 a 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.”

6. I note that the Accused had filed an appeal, which he withdrew before proceeding with the current application in compliance with the

Supreme Court directions of 6 July 2021.

7. As per directions above, this court has jurisdiction to entertain resentence hearing as the applicant was charged with offence of murder contrary to section 203 as read with section 204 of the penal code. I note that the accused was sentenced to 30 years imprisonment and not mandatory death sentence.

8. My understanding of this application is that the accused is seeking review of the 30 year jail term imposed. The mandatory death sentence was not imposed. The court acted contrary to the provisions of **section 204 of the penal code** and exercised discretion.

9. In my view, the above directions are applicable in a case where mandatory death sentence was imposed. What the applicant herein is seeking is review of the 45 year jail term imposed. This I believe should be dealt with by the appellate court.

10. From the foregoing, I find that I am not seized with jurisdiction to review the 30-year imprisonment sentence imposed by the High Court.

11. FINAL ORDERS

1) This application is hereby dismissed

2) The applicant may pursue review of sentence before the court of Appeal.

RULING DATED, SIGNED AND DELIVERED VIA ZOOM AT NAKURU THIS 8TH DAY OF DECEMBER, 2021

.....

RACHEL NGETICH

JUDGE

In the presence of:

Jenifer - Court Assistant

Rita for State