



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**HIGH COURT CRIMINAL CASE NO 53 OF 2008**

**REPUBLIC.....PROSECUTION**

**VERSUS**

**SAMWEL MURIUNGI KINYUA.....ACCUSED**

**SENTENCE**

1. The accused who was convicted for the murder Contrary to *Section 203* as read with *204* of the Penal Code comes up for re-sentencing following a successful appeal on his sentence to the Court of Appeal which by its judgment of 11/7/2019 which dismissed the appeal from conviction directed that “ his matter be remitted to the High Court at Meru for purposes of hearing the appellant’s mitigation before resentencing,” in accordance with the Supreme Court of Kenya decision *in Francis Kariuki Muruatetu & Anor v. R [2017] eKLR*.

2. In urging the accused’s mitigation counsel for the accused, Mr. K. Mugambi, pointed out that the accused had been in custody since 2008 and that he had been rehabilitated and learnt some trade while at the prison and was ready to join other citizens in building the nation, and that he was remorseful and pleaded for leniency.

3. Ms. Nandwa, Prosecution Counsel for the DPP urged that there was no report or evidence of accused’s conduct while in prison and it could not be said that he had been rehabilitated or that he had gained of useful trade or skill which could help him while out of prison. The DPP also pointed out that the accused had, as found by the trial court, brutally murdered his son by brutal strangulation, and urged a sentence of life imprisonment.

4. Counsel for accused asked the court to take judicial notice of the courses offered at the prison and find that accused had undertaken some courses during his long stay in prison.

5. The court as considered the nature of the offence herein, that the accused is convicted of killing his own 2 ½ year old son by strangulation. The court also notes this long custody since 28.8.2008, some 13 years during which the court is willing to accept he must have undertaken some form of correction including instruction in regular prison courses. In order to take into account the period of Pre-trial detention as required by such *Section 333 (2)* of the Criminal Procedure Code but being cognizant of the monstrosity of the crime of killing a child and need for deterrence, the court finds a sentence of imprisonment for a period of Fifty (50) years to be fitting and proper in the circumstances of this case. The sentence shall commence on 28/8/2008, the date when the accused was remanded in custody awaiting his trial.

*Orders accordingly*

**DATED AND DELIVERED THIS 15<sup>TH</sup> DECEMBER, 2021**

**EDWARD MURIITHI**

**JUDGE**