



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO.8 OF 2019

PAUL KINYANJUI NJENGA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Paul Kinyanjui Njenga was convicted of the charge of **murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The prosecution was able to prove that on 3rd September 2006 at Kiserian in Kajiado County, the Appellant murdered Damaris Wambui Peter, who was his wife. He was sentenced to death. His appeal to the Court of Appeal was dismissed. The conviction and sentence was confirmed. That could have been the end of the matter but for the window opened by the Supreme Court decision of **Francis Karioko Muruatetu –vs- Republic [2017] eKLR** which declared mandatory death sentence unconstitutional. The Supreme Court ordered the High Court to reconsider the sentences of those who had been sentenced to death. It directed the High Court to consider the mitigation of those so convicted and sentenced. It was on that basis that the Applicant made the application for resentencing to this court.

In his application, the Applicant stated that he was remorseful and regretted the decision that led to the death of the deceased. He reiterated that he knew that he was wrong and had reached out to the family of the deceased and sought forgiveness. He stated that his marriage to the deceased was blessed with three children who are now in the custody of the parents of the deceased. He pleaded with the court to be given a second chance at life so that he could take care of his family. Ms. Akunja for the State did not oppose the application for resentencing but urged the court to sentence the Applicant to serve a definite sentence.

Prior to the hearing of the application, this court ordered for a resentencing report to be prepared. The report was handed to the court on 10th December 2019. A pertinent part of the report was the victim impact statement. The parents of the deceased and the children of the deceased were interviewed. The parents of the deceased, while noting that the Applicant was physically abusive to the deceased prior to the causing her death, had forgiven the deceased. They stated that the Applicant had reached out to them and organized a family meeting where they had forgiven the Applicant. The parents of the deceased were currently taking care of the children of the deceased. They wished that the Applicant would be released so that he could support in the upbringing of the children but were unwilling to give him custody. All the children of the deceased had forgiven the Applicant but it should be noted that the children of the deceased were of young and tender age when their mother died.

The Supreme Court in the **Francis Karioko Muruatetu** decision gave the following guidelines when this court will be considering the Applicant's application on re-sentencing:

“[71]. As a consequence of this decision, paragraph 6.4-6.7 of the guidelines are no longer applicable. To avoid a lacuna, the following guidelines with regard to mitigating factors are applicable in a re-hearing sentence for the conviction of a murder charge:

(a) age of the offender;

(b) being a first offender;

(c) whether the offender pleaded guilty;

(d) character and record of the offender;

(e) commission of the offence in response to gender-based violence;

(f) remorsefulness of the offender;

(g) the possibility of reform and social re-adaptation of the offender;

(h) any other factor that the Court considers relevant.

[72] We wish to make it very clear that these guidelines in no way replace judicial discretion. They are advisory and not mandatory. They are geared to promoting consistency and transparency in sentencing hearings. They are also aimed at promoting public understanding of the sentencing process. This notwithstanding, we are obligated to point out here that paragraph 25 of the 2016 Judiciary Sentencing Policy Guidelines states that:

“25. GUIDELINE JUDGMENTS

25.1 Where there are guideline judgments, that is, decisions from the superior courts on a sentencing principle, the subordinate courts are bounded by it. It is the duty of the court to keep abreast with the guideline judgments pronounced. Equally, it is the duty of the prosecutor and defence counsel to inform the court of existing guideline judgments on an issue before it.”

In the present application, this court has considered the circumstances in which the Applicant killed the deceased. Both the High Court and the Court of Appeal reached the verdict that indeed the Applicant had caused the death of the deceased with malice aforethought. The Applicant strangled the deceased before dragging her body outside the house and throwing it into a well. The body of the deceased was later retrieved from the well. There was no justification for the Applicant to kill the deceased. From the evidence adduced, it was clear that the Applicant was a wife-batterer. The death of the deceased was a culmination of years of physical abuse meted on her by the Applicant.

This court has however noted that the family of the deceased has forgiven the Applicant. The Applicant has been in lawful custody for a period of fourteen (14) years. He is remorseful and has learnt his lesson in the period that he has been in prison. The State is not opposed to this court meting an appropriate sentence to the Applicant. This court was persuaded by the Applicant’s contrition by the fact that he reached out to the parents of the deceased to seek for forgiveness. The parents of the deceased reciprocated this gesture by forgiving the Applicant. In circumstances such as the present one, the main stakeholder in the quest for justice is the family of the deceased. Where the family of the deceased has been reconciled with the Applicant, the court has no option but to give effect to that reconciliation.

The upshot of the above reasons is that the Applicant’s application for resentencing succeeds. The death sentence meted on the Applicant is set aside and substituted by a sentence of this court commuting the custodial sentence of the Applicant to the period served. The Applicant shall be set at liberty forthwith and released from prison unless otherwise lawfully held. It is so ordered.

DATED AT NAIROBI THIS 5TH DAY OF FEBRUARY 2020

L. KIMARU

JUDGE