



REPUBLIC OF KENYA

AT THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL DIVISION

MISC. CR. APPLICATION 279 OF 2019

JOHN IRUNGU MACHARIA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Applicant was convicted of murder contrary to Section 203 as read with Section 204 of the Penal Code. The brief facts were that he quarreled with his then girlfriend Elizabeth Nyawira. He was jilted and went to school on 11th March, 2005 where Elizabeth Nyawira's daughter, Catherine Njeri, the deceased schooled. He took her from school feigning that he would buy her a snack. The body of the child was found a week later 18th March, 2005 in a sewerage. The exact cause of death was not established as the internal organs of the deceased were far decomposed to be examined.

2. He applied to have this court resentence him in line with the decision in **Francis Kariokor Muruatetu and Another v Republic [2017] eKLR**. This court is alive to the landmark jurisprudence set in this case. The spirit and letter of the decision is that the mandatory death sentence prescribed under Section 204 of the Penal Code is unconstitutional as it denies an accused person the right to mitigate. In the same spirit, it denies the trial court to impose an appropriate sentence premised on the mitigation an accused person offers and the circumstances of a case.

3. The court herein is therefore called upon to consider the mitigating and aggravating circumstances of the case and accordingly impose an appropriate sentence. Further, the Supreme Court in the case directed courts in paragraph 71 to employ:

"...the following guidelines with regard to mitigating factors are applicable in a re-hearing sentence for the conviction of a murder charge:

a.

b. being a first offender

c.

d.

e.

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.

4. The court ordered a probation officer's report to be filed. The Appellant submitted that he was remorseful. It was his further submission that he had sought to reconcile with the mother of the deceased without success because he had not been allowed to leave prison. It was also his submission that he had undertaken various courses in prison which gave him practical life skills in shoemaking. He further committed to

seek out reconciliation with the mother of the deceased once released.

5. The Respondent was opposed to the Application. Miss Nyauncho contended that this was a senseless murder. She submitted that the same was aggravated by the fact the Applicant killed a child to punish her mother. Further that there was no evidence that the Applicant tried to reconcile with the mother to the deceased. She urge that the application be disallowed.

6. The Appellant presented his certificates to show that he had gained life skills. It is clear that he had taken steps towards his own rehabilitation. It is not lost that this is one of the purposes of incarceration. The Supreme Court in its jurisprudence pointed to possibility of reform and social re-adaptation as a mitigating factor.

7. On aggravated nature of the offence, the Applicant took an innocent girl out of school deceiving both the girl and her teachers that he want to buy her a snack. He took her instead to deserted field and killed her. In the probation officer's report he reveals the chilling details of how he executed the heinous details. It is his narrative that he struck the girl to death with an iron bar.

8. In a bid to conceal the offence he threw the girl into a nearby river. The girl had nothing to do with the relationship differences that existed between her mother and the Applicant. It was evil to revenge with the death of an innocent soul. Then he attempted to hide and could not be traced for about one (1) week. I find that this was a wicked act that was compounded by subsequent behaviour.

9. Lastly, I note that the Applicant has not attempted to reconcile with the family of the deceased. It is a treacherous thing to kill someone with such remote connection to the soured love relations. What is beyond comprehension is the nonchalant manner of not caring to reconcile with the person he loved and wounded deeply. I find that the weight of his actions has not occurred to him.

10. I find that the Applicant did commit a heinous act that must align itself with proportionate sentencing objectives. The Applicant must learn that aside from learning life skills, there is retribution, community protection and denunciation. These are interests of justice that have to be balanced in passing a sentence.

11. I balancing all the factors, my view is that a deterrent sentence is deserved. He was sentenced to suffer death which was commuted to life imprisonment. Life imprisonment may not on the other hand serve all the intended purposes of a sentence outlined above. I therefore set aside the life imprisonment and substitute it with 40 years imprisonment commencing from 12th March, 2005. It is so ordered.

Dated and Delivered at Nairobi This 9th Day of April, 2020.

G.W.NGENYE-MACHARIA

JUDGE

In the presence of:

1. Applicant in person.

2. Miss Chege for the Respondent.