



**REPUBLIC OF KENYA**

**HIGH COURT OF KENYA**

**AT NAIROBI**

**MISCELLANEOUS CRIMINAL APPLICATION NO. 708 OF 2018**

**LESIT, J**

**CRISPUS THUO KAMAU.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING ON RE-SENTENCING**

1. The Applicant was convicted by my court for the offence of **murder** contrary to **section 203** as read with **section 204** of the **Penal Code** on the 1<sup>st</sup> July, 2010. He was sentenced to suffer death as prescribed under **section 204** of the **Penal Code** on the 7<sup>th</sup> July, 2010.
2. The Applicant has approached this court seeking to have Re-sentencing in line with the Supreme Court decision of **Muruatetu and another Vs. Republic Petition No. 14 and 15 of 2015**.
3. The Applicant gave oral submissions in this case in which he urged the court to re-sentence him in this case. He argued that he has not been heard by the Court of Appeal because even though he applied to appeal this court's decision ten years ago he is still waiting. I have confirmed that indeed the Applicant has not gone on appeal. It appears there has been delay in typing of proceedings.
4. The Applicant urged court to consider that he has been in prison for the last 10 years. He said that during that period he has learnt his lesson and was remorseful for his action. He said that he has reformed. He asked court to bear in mind he developed eye problem while in prison.
5. The Applicant drew the courts attention to remarks attributed to this court at the time of sentence. He urged that the court remarked that the penalty it would pass against him was mandatory.
6. The State was represented by Ms. Kimani Learned Prosecution Counsel. Ms Kimani submitted that the State was opposed to the appeal. Counsel urged that, as court noted in the judgment, the Applicant was aggressive and violent and that injuries he inflicted on the deceased rendered the offence to be considered aggravated.
7. Ms. Kimani drew the courts attention to the fact the Applicant went into hiding for nine years after committing the offence. Counsel urged that during that period of waiting the family of the deceased were deprived of justice and urged the court to find that in the circumstances it would be unfair to reduce the sentence meted out by the court in the first instance.
8. I have considered the application by the Applicant together with the sentiments expressed by the State.
9. I need not say much about the application of the **Muruatetu case, supra**, to this case as it is no longer a novel point. It has been decided time and again in many superior courts that where the court passing sentence was bound by a mandatory sentence and where it went ahead to pass it, that such case can rightly be re-considered for Re-sentencing.
10. In **paragraph 69** of the **Muruatetu case, supra**, the Supreme Court delivered itself thus:

**“Consequently, we find that Section 204 of the Penal Code is inconsistent with the Constitution and invalid to the extent that it provides for the mandatory death sentence for murder. For the avoidance of doubt, this decision does not outlaw the death penalty, which is still applicable as a discretionary maximum punishment.”**

11. In **Paragraph 71** of the same **Muruatetu** judgment *supra*, the Supreme Court to avoid a lacuna set out guidelines with regard to mitigating factors applicable in a re-hearing sentence for the conviction of a murder charge thus:

- “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.”**

**We wish to make it clear that these guidelines in no way replace judicial discretion. They are advisory and not mandatory. They are geared to promoting consistence and transparency in sentencing hearings...”**

12. I have considered the guidelines set out in the **Muruatetu case**, *supra*, applicable to this case for purposes of re-hearing sentence for the conviction of a murder charge. I have taken into account all the relevant factors.

- (i) The Applicant is now 48 years old.**
- (ii) He was a first offender at the time of conviction for this offence.**
- (iii) He pleaded ‘Not Guilty’ and was convicted after a full trial.**
- (iv) Accused character from the evidence of his mother PW2 was a chaotic child sent on terrorising his own parents and threatening to kill them. It was clear that on the day he committed this offence, it was the second time he had some home and committed an atrocity. The earlier atrocity of breaking all the window glass panels in his parents’ home.**
- (v) The Applicants says that he is remorseful for what he did. There was no demonstration of remorse at the time of conviction. I was not given any expression of remorsefulness by the Applicant as he argued this matter except the use of the word ‘remorseful’ on passing. I am not satisfied that the Applicant is remorseful for what he did.**
- (vi) I have considered, as urged by the State, that after committing this offence the Applicant went into hiding or nine years.**
- (vii) I have considered the manner in which this offence was committed. As I said 10 years before, the Applicant was aggressive and violent what is worse is the fact that he was going after his parents for actions, he said, offended him. However, he killed an innocent man, a worker of his parents who had been there only seven months. He had not done anything to warrant the violent attack on him.**

13. Having considered the mitigating factors and relevant factors to resentencing in this case, I find that there were excessive aggravating circumstances in this case. Not only was the Applicant threatening the lives of his parents, which I believe that if he got a chance to get to them he would have attacked them; the parents had done nothing to him to warrant such threats and violence.

14. In addition, the deceased was a young man who was working hard and faithfully to fend for himself. He was innocent Applicant actions against him are unjustified unprovoked, uncalled for and excessively malicious. The Applicant caused wanton loss of life.

15. Having come to the conclusion I have of this case, I find that the Applicant should remain in incarceration for a little while longer. May be that way he may be able to appreciate the gravity of his action. He will serve **thirty-five years (35)** imprisonment from the date of the original sentence in this case i.e. July 7, 2010.

16. Those are my orders.

**DELIVERED AND DATED THIS 4<sup>TH</sup> DAY OF MAY, 2020.**

**LESIT, J**

**JUDGE.**