



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**

**CRIMINAL DIVISION**

**PETITION NO.13 OF 2013**

**IN THE MATTER OF ARTICLES 22(1), 23(1), 25(a)(c)(d), 50(1).(2)(p)(q), 19(1)(2) &(3),  
20(1)(2)(3) & (4), 21(1), 24(1), 27(1), 28, 47, 48, 165, 258 & 259 OF THE CONSTITUTION, 2010**

**AND**

**IN THE MATTER OF SECTIONS 216 AND 329 OF THE CRIMINAL  
PROCEDURE CODE AND SECTION 204 OF THE PENAL CODE**

**AND**

**IN THE MATTER OF THE SUPREME COURT JUDGMENT IN PETITION NO.15 OF 2015**

**FRANCIS KARIOKO MURUATETU & WILSON THIRIMBU MWANGI**

**AND**

**IN THE MATTER OF DECLARATION IN PETITIONNO.618 OF 2010  
JOSEPH KABERIAKAHIGA AND OTHERS VS ATTORNEY GENERAL (2016)**

**AND**

**IN THE MATTER OF ARTICLE 262 IN THE MATTER OF ARTICLES**

**IN THE MATTER OF ARTICLES IN THE MATTER OF ARTICLES**

**BEATRICE WANJIRU KINYUA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

1. A brief outline of the case was that the applicant **Eliud Njire Gatura** was charged with the offence of murder c/s 203 as read with section 204 of the Penal Code; the particulars of the offence are that on the 21<sup>st</sup> day of June, 1999 at Kirogo Village in Kirinyaga the applicant murdered Rose Wakuthi Muriuki.
2. The applicant was convicted and was sentenced accordingly for murder; the provisions of Section 204 of the Penal Code imposes a mandatory death sentence for the offence of murder; being aggrieved with the Honourable Judge's decision the applicant lodged an appeal in the Court of Appeal **vide CR. APP. No.60 of 2014** which appeal was dismissed; the court upheld the trial court's decision and found that the applicant was properly convicted and found no reason to interfere with the conviction and sentence;
3. The applicant being aggrieved with this decision and having exhausted all the processes of appeal has now petitioned this court for

resentencing under the guidelines made by the Supreme Court in the **Francis Karioko Muruatetu vs Republic (2017) eKLR** case; in this instant application the applicant is seeking the following prayers;

- (i) An order for reduction of the life sentence imposed to commence from the date of arrest.
- (ii) The court to take into account the fact that the applicant was a first offender and a model prisoner and has shown remorse for her deeds.

4. At the hearing hereof the applicant was unrepresented and relied on the filed written submissions; whereas the respondent was represented by Prosecuting Counsel Ms Gicheha who made oral submissions; hereunder are the parties respective submissions;

#### **APPLICANT'S CASE**

5. The application is for review of sentence under the guidelines set down in the **Muruatetu** (supra) case; the court to consider the circumstances surrounding the commission of the offence; the circumstances surrounding the offender; and the circumstances surrounding the victim;

6. That the resentencing court has been given wide discretion and it ought to take into consideration the following mitigating factors; that the applicant was a first offender; the reconciliation and reparation efforts she had attempted with the family of the deceased; her remorsefulness and rehabilitation whilst serving the sentence; and also to take into consideration her age and health;

7. Further to consider the provisions of Section 333(2) of the Criminal Procedure Code and to put into consideration the time spent in prison during the trial; she submitted that she had spent ten (10) in custody from the time of her arrest; case law relied upon **Titus Ngamau Musila alias Katitu CR. Case No.78 of 2014**.

8. To support her prayer for re-sentence the applicant relied on the Probation Report which is extremely favourable; and also annexed certificates to demonstrate that she was a model prisoner;

9. The applicant prayed that balancing mercy and justice her sentence be reviewed to a custodial sentence of twelve (12) years and a probationary non-custodial sentence of three (3) years; case law relied on Malindi Court Appeal decision of **Mlamba Ali Mabanda CR.App.No.12 of 2013**.

#### **RESPONDENT'S CASE**

10. In response counsel confirmed that the re-sentence was silent on the commencement date; the seven (7) years ought to have been considered;

11. Counsel submitted that no one was injured during the commission of the offences; the Probation Report was also favourable and that it was apparent therefrom that the applicant had reformed; and was not opposed to the prayer for the review and reduction of the sentence;

#### **ISSUES FOR DETERMINATION**

12. After hearing the rival submissions this court has framed only issue for determination is as follows;

- (i) Whether to review the sentence imposed by the trial court; the commencement date of the sentence;

#### **ANALYSIS**

13. Therein the Supreme Court declared the mandatory death sentence to be unconstitutional and persons so convicted were at liberty and entitled to petition the trial court for re-sentencing; in line with the decision the trial court has the mandate to grant alternate sentences after taking into consideration mitigating factors;

14. In the Muruatetu (supra) case the Supreme Court gave guidelines with regard to mitigating factors it also held entitled trial court reviewed his sentence to twenty (20) years imprisonment; still aggrieved with this decision he filed this instant application seeking the following prayers;

#### **FINDINGS AND DETERMINATION**

15. For the foregoing reasons this court makes the following findings and determinations;

- (i) This court finds that the Petition is partially meritorious.
- (ii) The sentence imposed is hereby revised and substituted with a custodial sentence for a term of forty (40) years for each of the petitioners; the sentences be reduced proportionately by the period the petitioners spent in custody from the date of arrest which was on 2/04/2002.
- (iii) The remission as envisaged by Section 46(1) & (2) of the Prisons Act is found to be premature at this stage and is hereby

disallowed; the petitioners are at liberty to apply.

Orders accordingly.

**Dated, Signed and Delivered at Nyeri this 9<sup>th</sup> day of July, 2020.**

**HON. A. MSHILA**

**JUDGE**