



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**MISC.APPL NO.112 OF 2018**

**GEORGE KIRIKA NJOROGE.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. This is a ruling on application for resentencing. The applicant had been charged and convicted of the offence of **murder contrary to section 203 as read with section 204 of the Penal Code**. He was sentenced to death. He has exhausted his right of appeal by filing appeal in both the High Court and Court of Appeal. His sentence was commuted to life imprisonment in the year 2009.

2. The applicant relied on the case of **Francis Karioko Muruatetu Vs Republic [2017] eKLR** to argue that the mandatory life sentence imposed by the trial Court and upheld by the High Court is excessive and harsh and sought an appropriate sentence.

3. The applicant orally submitted that he has served sentence for 16 years now and has had opportunity to train in theological and health education, fire and rescue, resource oriented development initiative, drug awareness, new life behavior, carpentry and tailoring. He said he was 35 years old at the time he was arrested and he is now 51 years old; that he had a wife with 9 children. He said after his arrest, his family moved to live with his parents in Kangundo. He said he intends to do business if released. He said he has learnt to make soap, jik and yogurt while in prison and if released he will make the items and sell. He prayed that he be given an opportunity to go back to the community. He stated that his family is ready to receive him if released.

4. **Ms. Rita Rotich** for the state opposed the application and urged Court to consider aggravating circumstances. She submitted that the murder by applicant was carried out in cold blood by use of a knife; that it was premeditated. That the victim was stabbed by the applicant repeatedly and the murder was carried out in front of deceased's children who have been left without a parent; that she spend two weeks in hospital before succumbing to the injuries. She stated that the state recommend that the applicant be resentenced to 25 years imprisonment.

5. In response the applicant stated that the deceased had 4 children the youngest fathered by him. He stated the deceased was his lover even before he married; that he went to Nairobi and when he came back he found that she had been married; that he told her her husband had died and asked her to help her. The applicant said he opened for her a hotel in the year 2001 and moved her from Nakuru to Subukia while he run a butchery. He said he lived with her until she got the youngest child and that she was pregnant when she died. The applicant stated that he intends to settle the deceased's children in his land in Subukia and he has always sent people to his family to ask for forgiveness.

**ANALYSIS AND DETERMINATION**

6. The applicant herein was sentenced to life imprisonment before the Supreme Court's decision in **Francis Karioko Muruatetu Vs Republic [2017] eKLR**. The Supreme Court declared unconstitutional the mandatory nature of sentence imposed as it takes away the discretion of the trial Court to determine sentence to impose depending on circumstances and mitigation factors advanced in a particular case. The Supreme Court found that the taking away of discretion of the Court renders the mitigating factors superfluous.

7. I note that the applicant has taken the period he has served prison positively and learnt skills to improve himself for his benefit, family and community. This is evidence of resolve to reform and be of benefit to the society. He also appears remorseful and willing to assist the deceased's children.

8. In view of the above, I find that the applicant deserves reduction of sentence. I therefore reduce the applicant's sentence to 20 years' imprisonment.

**9. FINAL ORDERS**

1. Sentence is reduced to 20 years' imprisonment.
2. The sentence to run from the time the applicant was sentenced in the lower court.

**Ruling dated, signed and delivered via zoom at Nakuru**

**This 21<sup>st</sup> day of July, 2020**

.....

**RACHEL NGETICH**

**JUDGE**

**In the presence of:**

Jeniffer - Court Assistant

Applicant in person present

Rita for State