



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL MISC. APPLICATION NO. 10 OF 2020

RONOH KHALIF AHMED.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Applicant was charged with offence of murder in Garissa HCCR No. 11 of 2012 in which he was alleged to have murdered 4 persons. He was convicted after hearing and sentenced to death on 13/1/2017.
2. He never appealed but on 5/2/2020 he lodged an application for re-sentencing to the principles of Supreme case of **Muruatetu** which held that the mandatory aspect of murder offence is unconstitutional.
3. At the date of sentence on 25/4/2017 the aforesaid case of **Muruatetu** had not made verdict above but did later on 17/12/2017. Thus, the principles for re-sentencing thereof were said would apply in all cases thereof which had applied provisions of murder penalty of death as mandatory.
4. Thus, since Applicant's matter is within the aforesaid period (Pre-**Muruatetu**) verdict, this court has jurisdiction to entertain the sentence in the instant case as the trial court held penalty to be mandatory.
5. The Applicant has been in custody for 10 years or so and he says that he is repentant and remorseful. Married with children after he murdered wife and 3 others after he found her in another man's hands in a compromising position. He is over 60 years old.
6. However, since the court's hands were tied by provisions of section 204 of the Penal Code i.e. the High Court had no discretion on penalty other than awarding death sentence. Thus, mitigations were of no consequences. This is what the Supreme Court in **Muruatetu** case declared unconstitutional. The court held;-

“We are in agreement and affirm the Court of Appeal decision in Mutiso that whilst the Constitution recognizes the death penalty as being lawful, it does not provide that when a conviction for murder is recorded, only the death sentence shall be imposed. We also agree with the High Court's statement in Joseph Kaberia Kahinga that mitigation does have a place in the trial process with regard to convicted persons pursuant to Section 204 of the Penal Code. It is during mitigation, after conviction and before sentencing, that the offender's version of events may be heavy with pathos necessitating the Court to consider an aspect that may have been unclear during the trial process calling for pity more than censure or on the converse, impose the death sentence, if mitigation reveals an untold degree of brutality and callousness.”

7. This court will consider whether to retain the death penalty as maximum sentence or convert it into a term sentence.
8. The State Counsel submitted that as the Applicant destroyed 4 lives of human beings by killing them and still stands convicted of murder of 4 persons, he should face death penalty.
9. Under section 329 of the Criminal Procedure Code Cap. 75 Laws of Kenya, it is mandatory to receive mitigations. Thus, this court has to consider whether same would have warranted the sentence of death or other form of penalty now that court has discretion.
10. The killing of 4 people is captured in the judgement. He went to a hotel and shot 2 brothers unprovoked. Then went to his house and killed same morning his pregnant wife and a daughter. He was a KPR legally issued with the gun.
11. His defence is only an attempt to say he was mentally ill but no other justification for the murder acts. But he never proved that he was mentally ill nor rely on defence of insanity.

12. I find that the killing of 4 people including a baby in his wife's womb literally 5 persons (lives) is totally unjustified and calls for a maximum penalty. Thus, though the trial court never considered mitigations and treated penalty as mandatory, in the circumstances of this case, the sentence is merited as a maximum penalty not as a mandatory sentence.

13. Thus, the court makes the following orders;

i) The application is rejected and dismissed and death penalty retained as the sentence of the court.

DATED, DELIVERED AND SIGNED AT GARISSA THIS 1ST DAY OF JULY, 2020.

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C. KARIUKI

JUDGE