



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

MISC CRIMINAL APPLICATION NUMBER 10F 2019

ANN WANGARI MUNGAI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

1. The applicant **ANN WANGARI MUNGAI** was charged with Murder under section 203 as read with section 204 of the Penal Code in Nakuru HCRC No 73 of 2001. She was convicted and sentenced to death on 26/7/2004. Her appeal no. 164 of 2004 to the Court of Appeal was dismissed on 2/3/2007. The sentence of death was commuted to life imprisonment in 2010.
2. She now comes before this court seeking a re-sentence under the auspices of the **Francis Karioko Muruatetu & others vs R [2017] eKLR** case which declared the mandatory nature of the death sentence to be unconstitutional. She also relies on the court of Appeal case **William Okungu Kitinny vs R [2018] eKLR**, **John Njenga Gaceru & Another vs Rep [2018] eKLR**. Articles 20(3) (a) (b), 21, 163(7) of the Constitution.
3. The prosecution through Ms. Odero had no objection to the application and left the matter to court.
4. I sought for a Pre-Sentence Social Inquiry Report.
5. The applicant was **convicted** and sentenced to death for killing her step son – the 16-year-old boy who was the youngest of the children of her husband’s ex-wife.
6. This court and the Court of Appeal were persuaded that the killing of the innocent young boy was pre-meditated.
7. To-date 20 years down the line her now ex-husband and the father to the boy is still full of bitterness for what happened to his son.
8. Her own community is still of the view that what she did was so heinous she is not welcome back in their midst. There remains hostility against the applicant from the community with only her immediate family being ready and willing to receive her back
9. To-date the applicant still lays the blame on the step children for what she did. The report at page 3 states:
10. Page 3 of the report;

“Her attitude mostly centers on her still blaming the children for what was essentially a very tumultuous marriage characterized by her rejecting the step children... she harbours the notion that they were the ones who made her commit the offence by their actions of disrespecting her as well as their mother who she says was inciting them to do this”
11. She rejected the children who ended up living in a separate house fending for themselves.
12. The report presents that there are two sets of victims here. The first being father and mother of the deceased and the siblings of the deceased.
13. The two children of the applicant, who were aged 4 and 6 years respectively at the time of her arrest. These not only lost their brother but their parents well. Their mother was arrested. They were rejected by their father who took them to their maternal relatives, and refused to maintain them until he was sued for maintenance. They too have suffered stigma and continue to be without their mother.
14. The Probation and After Care services recommends a Probation order in favour of the applicant on the grounds that;

- she poses no risk to the victim family or any other member of his family and has even pledged to avoid any sought of contact with his family”.
- That she promises to abide by any conditions this court may set by the court.
- That she is really repentant of the events that transpired.
- That she is aware that reconciliation might never be possible.
- That she may not be a danger to herself/her family.

15. It is apparent that the hostility in half the family and part of the community is still live. The Probation Officer stated that the;

“matter was deemed extremely heinous by the area residents.... And though time has passed it is evident that those who remember the incident are yet to forgive...not ready to welcome her back”

16. In the circumstances above I would have expected the Probation and After Care Services to recommend a period for preparation of the two sides for the applicant’s arrival and re-integration.

17. The court of appeal while dismissing her appeal in **Anne Wangare Mungai vs R** described the killing thus,

“The deceased, Danson Wambugu Waithaka, a boy aged about 16 years at the date of his death namely 16/7/2000 was hacked to death and his body stuffed inside a polythene bag head first, and then put in a sack which was then put among bags of potatoes inside the kitchen store”

18. The final recommendation that she is remorseful is inconsistent with what is in the body of the report where she says that she still blames her step children for what happened. It would appear that in the 20 years she has been in prison she has not contemplated the magnitude of her actions; the fact that the child for whose murder she was found guilty was innocent and did not deserve to die. This, in my considered view, is not the attitude of a person who has taken responsibility for her actions. It is not the attitude of a person who has seen her own role in the loss of the child’s life and I am not persuaded that a non-custodial sentence would be suitable for in her case.

19. Following **Francis Karioko Muruatetu & others vs R [2017] eKLR**, the appellant’s sentence of death is up for a relook. I find that a sentence of 40 years’ imprisonment would suffice.

20. The sentence of death is and is hereby substituted with a sentence of 40 years’ imprisonment to run from on 26th July 2004.

21. Right of Appeal 14 days.

Dated Delivered and signed at Nakuru this 8th Day of October 2020.

Mumbua T Matheka

Judge

VIA ZOOM

Present:

Edna CA

Applicant present