



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

HIGH COURT MISC. APPLICATION CASE NO. 76 OF 2016

LESIT, J

CHRISTOPHER MURAYA MUTAHL.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING ON RE- SENTENCE

1. The Applicant **CHRISTOPHER MURAYA MUTAHI** was convicted by this court and sentenced to suffer death on 24th June, 2010.
2. The Applicant filed an appeal to the Court of Appeal. On the 8th November, 2013 the appeal was dismissed and the death penalty confirmed.
3. After exhausting the appellate jurisdiction, the Applicant's sentence of death was commuted to life imprisonment by His Excellency the President. The date of commutation was not given.
4. This application was filed pursuant to the decision of **Francis Kariko Muruatetu & another Versus Republic and Others, PETITION NO. 15 & 16 of 2016 (consolidated)**. This a Supreme Court decision and is a binding authority to this court. According to that decision, in all cases where mitigation before sentence was never taken, or where it was taken and never considered, the convicted persons can apply for re-sentencing.
5. The Supreme Court in the **Muruatetu** case, supra sets out guidelines to assist the courts in the determination of the re-sentence application where mitigation was not considered prior to the said case. The guidelines are as follows

“As a consequence of this decision, paragraph 6.4-6.7 of the guidelines are no longer applicable. To avoid a lacuna, the following guidelines with regard to mitigating factors are applicable in a re-hearing sentence for the conviction of a murder charge:

- (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 very clear that these guidelines in no way replace judicial discretion. They are advisory and not mandatory. They are geared to promoting consistency and transparency in sentencing hearings. They are also aimed at promoting public understanding of the sentencing process. This notwithstanding, we are obligated to point out here that paragraph 25 of the 2016 Judiciary Sentencing Policy Guidelines states that:

GUIDELINE JUDGMENTS

Where there are guideline judgments, that is, decisions from the superior courts on a sentencing principle, the subordinate courts are bound by it. It is the duty of the court to keep abreast with the guideline judgments pronounced. Equally, it is the duty of the prosecutor and defence counsel to inform the court of existing guideline judgments on an issue before it”.

6. The situation in this case fits the analysis in **Muruatetu case**, supra. The requirement is to consider which sentence is appropriate after taking into consideration:

(a) Applicant’s mitigation.

(b) The period the Applicant has spent in custody as prescribed under **section 333(2)** of the **Criminal Procedure Code**.

(c) Any other information available which is relevant to the case including victim Impact Statement.

7. I considered the mitigation given by the Applicant specifically that at the time he committed this offence he was a young family man. He urged that he is remorseful and regrets the entire incident. He urged that what happened was not out of his will.

8. The Applicant has urged that he has undergone spiritual transformation, training in Agriculture and soap making courses. I have seen the certificates and have confirmed the training and courses the Applicant has undergone.

9. The Applicant concluded by saying he had come to realize that he made a serious error and has since reformed.

10. Mr. Otieno for the Responded urged court to consider the **Muruatetu Case**, which is a new jurisprudence in this matter.

11. Before passing Re-sentence in this case, I called for and received a Re-Sentencing Report from Probation. Mr. Ntulele a Probation Officer has filed one dated 10th January 2019. It is quite elaborate. It contains reactions from the families of the accused person and the deceased.

12. The Report gives Applicant’s personal history, attitude towards the offence and Rehabilitation he has gone through while in prison.

13. There is Victim Impact Statement from family members of the deceased. They are unhappy to-date and traumatized for loss of their kin. They do oppose Applicant’s release from prison.

14. I have noted that the Applicant admits having murdered his wife, the deceased in this case. He acknowledges it was a mistake which he regrets.

15. I have considered that the Applicant was arraigned in court on 20th May 2008. During that time bond was not considered for capital offenders. He therefore remained in custody from that time until the case was concluded on 24th June, 2010. That was a period of 2 year and 1 month

16. I have considered that the Applicant has been in prison since August 2011 to-date, a period of 8 years and 8 months.

17. In total therefore the Applicant has been in prison for the last almost 11 years.

18. Having taken all the factors and circumstances of this case as at this point, the period he has been in custody, I find that for the offence he committed a prison term is still the appropriate sentence to impose.

19. In all I find that an imprisonment term is still the appropriate sentence to impose in this case, but not for life as per the Presidential pardon in which his death penalty was commuted to life. Consequently, I order that the Applicant should now serve a period of 18 years imprisonment from the date of arraignment in court on 20th May, 2008.

20. Those are the orders of this court.

DATED AT NAIROBI THIS 7TH DAY OF MARCH, 2019.

LESIIT, J

JUDGE