



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**CRIMINAL PETITION NO. 19 OF 2018**

**MARY WANJIKU GITONGA.....PETITIONER**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The petitioner has filed a petition seeking a resentencing in a trial in which she was convicted of murder. The petition is in the wake of the Supreme Court's decision in Petition No. 16 of 2015, Francis Kariokor Muruatetu & Another versus Republic the gist of which is that Section 204 of the Penal code which provided for a mandatory death penalty upon conviction on an offence of murder was declared unconstitutional. Since then, we have had an avalanche of petitions for resentencing by convicts who had initially been condemned to die. No doubt, the petitioner's petition falls into this category of petitions.

It is apparent from the petition that upon conviction by this Honourable Court, the appellant appealed to the Court of Appeal. The appeal was dismissed and the death sentence meted out against her upheld. It is also apparent from the judgment of the Court of Appeal that the sentence was commuted to life imprisonment by the President of the Republic of Kenya.

What I gather from the Muruatetu judgment is that it is only those cases where the prisoners were sentenced to death that are eligible for reconsideration of their sentences by the trial courts. The decision is silent on whether the same courts could also hear petitions on resentencing where the initial sentences have been commuted to life imprisonment.

The Supreme Court proposed a framework to guide trial courts in rehearing of these matters. The office of the Attorney General was tasked to be the lead agency in formulating the necessary framework. If that framework had been made, it would certainly have provided some guidance on how to deal with death sentences that have been commuted to life imprisonment. However, as far as I am aware, no such framework or guidelines have been formulated so far.

In the absence of this framework or the necessary guidelines, all I can say is that as long as the Supreme Court did not expressly bar the trial courts from hearing resentencing cases where the sentences of death have been commuted to life imprisonment, it is open for the trial courts to hear them on the basis of the original death sentences.

It is upon this understanding that I am inclined to consider the petitioner's petition.

The petitioner has stated that she is remorseful and that she did what she did out of anger. All these matters should obviously have been considered during mitigation. I did not, however, have the chance to look at the judgment of this court in order to appreciate whether the petitioner ever mitigated since that judgment was not included in the petition. Nevertheless, even if the petitioner had mitigated, death was still a mandatory sentence for the offence for which she was convicted and thus any sort of mitigation would have been of little consequence.

The state has urged that should the court consider resentencing the petitioner, the sentence should be one that will help rehabilitate her. I understand this submission to imply that the state is not overly opposed to the petitioner's petition.

Taking all these matters into account, I hereby vary the death sentence against the petitioner and reduce it to a sentence of 30 years imprisonment. In other words, rather than serve the death sentence which has now been commuted to life imprisonment, the convict shall serve thirty (30) years imprisonment. The prison term shall take into account the time she has already served. It is so ordered.

**Ngaah Jairus**

**JUDGE**

13/5/2019