



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

PETITION NO. 1 OF 2018

PATRICIO NJIRU KIRANGL.....1STPETITIONER

JONATHAN NJERU MANUNGA.....2ND PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

A. Introduction

1. The petitioners filed separate applications being Petition Nos. 1 and 35 both of 2018 dated 18/6/2018 and the other undated respectively which were consolidated. The gist of this consolidated application is that the petitioners seek re-hearing on sentence pursuant to the Supreme Court petition judgement of **Francis Karioko Murwatetu Vs Republic [2017] eKLR**
2. The petitioners and another not before this court were jointly charged and convicted with the offence of murder contrary to **Section 203** as read with **Section 204 of the Penal Code** and was handed the mandatory sentence of death. The petitioners then moved to the Court of Appeal where the court upheld the judgment of the High Court and dismissed the appeals. The applicants have exhausted all avenues of appeal available in law.
3. This application was argued through written submissions with rejoinder of oral submissions from the respondent.

B. Petitioner's Submission

4. The 1st Petitioner submitted that he was entitled to a reduction of his sentence based on the Supreme Court judgement in the **Francis Karioko Murwatetu** petition (supra) or in the alternative a reduction of his sentence to the nineteen (19) years he has already served. He further submitted that he had learnt some trades that would help him earn a living if released by the court.
5. The 2nd petitioner on his part submitted that he was a first time offender and had since rehabilitated. He further stated that he was ready to restart his life in society and to utilize the trades that would help him earn living.

C. Respondent's Submission

6. The prosecution was categorical that they opposed the resentencing of the petitioners. Ms. Mati for the prosecution submitted that the seriousness of the offence of murder and the circumstances under which it was committed should be considered by court in arriving at its determination. She submitted that the limbs of the deceased had been chopped off and her body thrown in a pit latrine.
7. Ms. Mati relied on the case of **Republic v Ruth Wanjiku Kamande [2018] eKLR** where Lessit J declined to grant a sentence less than death due to the nature of the death caused by the accused who had stabbed the deceased twenty one (21) times with a knife.

D. Analysis of the Law

8. The application by the applicants is grounded on the holding of the Supreme Court judgement in the Petition of **Francis Karioko Murwatetu v Republic [2017] eKLR** that declared the mandatory death penalty as unconstitutional.
9. The Supreme Court in the **Murwatetu** case sets out guidelines to assist the courts in the determination of the sentence where mitigation was not considered prior to the said case. The guidelines are as follows: -

“(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.

It was the court holding that the guidelines in no way replaced judicial discretion. They are advisory and not mandatory. The court further pointed out the provisions of 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”.

10. The Supreme Court in **Murwatetu & another** (supra) petition, affirmed the decision of the Court of Appeal in **Godfrey Ngotho Mutiso v R.C.A. No. 17 of 2008**, and the High Court in **Joseph Kaberia Kahinga and Others v The Attorney General [2006] eKLR** regarding the unconstitutional nature of the mandatory death sentence provided under Section 204 of the Penal Code.

11. The Supreme Court then made it clear exactly how the mitigation of the accused person should be applied by the court before the accused is sentenced. The Court stated that: -

‘it is during mitigation, after conviction and before sentencing, that the offenders’ 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 penalty.’

12. The position is that pursuant to the **Murwatetu** petition (supra) the courts now may exercise discretion when passing sentence in capital offences. In the case of **Republic v Ruth Wanjiku Kamande [2018] eKLR** **Lesiit J** stated that discretion to pass a sentence other than that of death in capital offences should only be exercised in the deserving cases.

13. The facts and the evidence in this case was that on the 19th September 1996, the deceased’s body with her head, the legs and the hands chopped off was discovered in a pit latrine belonging to the 1st Petitioner. It is the 1st petitioner who led the police to the pit latrine at his home where the deceased’s body was found. The 2nd Petitioner gave a statement under inquiry to the police to the effect that he and the 1st petitioner had conspired to kill the deceased’s husband but later settled on the deceased as they couldn’t find her husband. The 2nd petitioner’s statement further detailed the gory details of the deceased’s murder.

14. The applicants were represented by an advocate during the trial. The trial judge asked them whether they had anything to say before he passed sentence. The answer was that they had nothing to say.

15. I have carefully perused through the petitions and find nothing in mitigation. It can be rightly concluded that the petitioners to this day are not remorseful for the heinous crime that they committed on an innocent person.

16. The offence of murder is a serious one and must be discouraged. Ending the life of a human being should not be taken lightly for it adversely affects families including innocent children who are deprived of parental love and support.

17. The case of the petitioners is made worse by the fact that they killed the deceased just because they could not find her husband who was the target. The motive of killing pointed to a land dispute between the two families which would have been resolved in legal proceedings. The deceased died a painful death through being slashed on the head three times with a panga and her limbs chopped off.

18. It is my considered view that the petitioners deserve the sentence that was imposed upon conviction.

19. I find no merit in this petition and it is hereby dismissed.

20. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 4TH DAY OF JULY, 2019.

F. MUCHEMI

JUDGE

In the presence of: -

Ms. Mati for Respondent

Petitioner present