



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

MISC. CR. APPLN. NO. 53 OF 2018

GEOFFREY KIRIMI M'MUTHURI.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. **Geoffrey Kirimi M'Muthuri**, the applicant, was charged with murder contrary to *section 203* as read with *section 204 of the Penal Code*. It had been alleged that on 19/3/2008 at B.B.C. area in Meru Central District, the appellant murdered his wife, **Leah Kagwiria** (“the deceased”).

2. After trial, the applicant was convicted of the offence and sentenced to suffer death as per the law provided. He appealed to the Court of Appeal against both the conviction and sentence. Vide a judgment dated 13/11/2013, the Court of Appeal upheld both the conviction and sentence.

3. On 14/12/2017, the Supreme Court of Kenya held that, the mandatory nature of the death sentence under *section 204 of the Penal Code* was unconstitutional as it took away the constitutional discretion of the court. See **Francis Karioko Muruatetu & another v Republic [2017] eKLR (“Muruatetu case”)**.

4. Pursuant thereto, by a Motion on Notice dated 13/4/2018, the applicant applied that he be re-sentenced afresh. That he had been in custody for 11 years; that due to the mandatory nature of the death sentence, his mitigation was never considered. That by virtue of the **Muruatetu Case**, his sentence should be reviewed, his mitigation be considered and he be resentenced afresh.

5. He contended that for the 11 years he had been in custody, he had been rehabilitated, had undertaken various courses which had changed him. That he was now capable of being productive and of value to society.

6. The applicant produced a recommendation letter from the institution that he has been under, Meru Main Prison dated 22/5/2018. That recommendation was positive of the applicant. However, it would seem that he has to date not engaged in any trade or meaningful skill which if he was let out to the community would help him earn a living.

7. **Mr. Ashaba**, Learned Counsel for the applicant submitted that since the applicant has since reformed, he should be considered for a lenient sentence. **Mr. Maina**, Learned prosecutor left it to court.

8. I have considered the foregoing. I have considered that the applicant was sentenced to death for reason that the offence of murder at the time carried a mandatory death sentence. The mandatory nature of that sentence has since been outlawed. The applicant is entitled to have his mitigation considered.

9. In the premises, the death sentence is hereby set aside.

10. I have considered the mitigation put forth by the applicant. He is a first offender as no records were produced regarding him. He never stated that he was remorseful of the offence either in his affidavit in support of the application or when he appeared before me. He only stated that he is now reformed. That may be so but the law looks both at the perpetrator and the victim. Being remorseful assuages the victim's feelings. This is missing in this case.

11. I have considered the record. The evidence that was upheld by both this Court and the Court of Appeal was that, on 19/3/2013, the applicant presented himself before Subuiga Police Station and told the police that he had hit the deceased who was at home.

12. When the police went to the scene, they found the deceased seated on a chair bleeding profusely. There was a folk *jembe* next to her which was produced as an exhibit at the trial. She was rushed to Isiolo District Hospital and later referred to Kenyatta National Hospital for

specialized treatment but succumbed to her injuries.

13. The cause of the injury according to the applicant was that he had given the deceased Kshs.110,000/- the previous day. When demanded to be given the same on the material day, the deceased insulted him and assaulted him. The trial court did not disbelieve the applicant on the reason for the scuffle but it did disbelieve his allegation that the deceased fell on a folk *jembe*.

14. In view of the foregoing and the mitigation given on behalf of the applicant, it would seem that the applicant did his case while in custody, the reason why he says he has been in custody for 11 years now.

15. Further, in view of the fact that the applicant has not learnt any trade or skill that can benefit him if and when released, I sentence the applicant to 25 years imprisonment. The sentence is to run from the date the applicant was first sentenced by this court on 7/6/2012.

Orders accordingly.

DATED and DELIVERED at Meru this 17th day of October, 2019.

A. MABEYA

JUDGE