



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO.434 OF 2018

LOLWAKIJU LENGIRONI LEYALAN..... APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Lolwakiju Lengironi Leyalan was convicted of **murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The court found that the prosecution had established to the required standard of proof that the Applicant killed Mangenyan Lengirone, his wife on 11th September 2001 at Kayole Estate in Nairobi County. He was sentenced to death on 25th January 2005. His appeal to the Court of Appeal was disallowed. His conviction and sentence was confirmed on 8th November 2013. The death sentence was later commuted to life imprisonment by Presidential decree. That would have been the end of the matter but for the window opened by the Supreme Court's decision of **Francis Karioko Muruatetu v Republic [2017] eKLR** which declared the mandatory death sentence unconstitutional. It further declared that those who were sentenced to serve the mandatory death sentence should be given an opportunity to give their mitigation before being resentenced.

It is on that basis that the Applicant has applied to this court to be resentenced. He told the court that he had been in lawful custody since he was arrested on 11th September 2001. In the period of his incarceration, he had reformed. He presented to court certificates which showed that he had undertaken tailoring courses and had qualified. An officer from Naivasha Maximum Prison noted that the Applicant has been of exemplary behaviour while in prison. The Applicant urged the court to take into consideration the fact that his parents died while he was in prison. His children had grown up without his guidance. He urged the court to sentence him to serve a lesser period in prison or alternatively order his release from prison.

Ms. Sigei for the State opposed the application. She submitted that the aggravating circumstances in which the offence was committed were such that it outweighed the Applicant's mitigating circumstances. She pointed out that the Applicant killed the deceased in such a heinous and brutal manner that the sentence that was meted on him is deserved. She urged the court to take into consideration that circumstance and dismiss the application. This court ordered a resentencing report to be prepared by the Probation Officer prior to delivery of its ruling. The report was prepared and filed in court. This report shall in part aid this court in reaching its determination on resentence.

The Supreme Court in the **Francis Karioko Muruatetu** decision gave the following guidelines when this court will be considering the Applicant's application on re-sentencing:

“[71]. 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.

[72] 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:

“25. GUIDELINE JUDGMENTS

25.1 Where there are guideline judgments, that is, decisions from the superior courts on a sentencing principle, the subordinate courts are bounded 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.”

In the present application, this court agrees with the prosecution that the aggravating circumstances were such that this court cannot favourably consider the Applicant’s mitigating circumstances. From the evidence that was adduced before the trial court, it was evident that the Applicant killed the deceased, his wife, in circumstances that can only be described as brutal, and cruel and savage. The Applicant stabbed the deceased severally and cut open her abdomen to the extent that he exposed the deceased’s uterus which had a five month foetus. From the post mortem report, it was evident that the Applicant stabbed the deceased severally and then used the knife to cut an incision from the middle of the chest down to the pubic area exposing the innards of the deceased. The Court of Appeal made the following observation regarding the nature of the attack:

“This was a grisly and gruesome murder. It is hard to imagine the intensity of the pain the deceased suffered. She was overpowered and totally helpless. On the totality of the evidence, the only person who could have murdered the deceased was the Appellant and no one else.”

The resentencing report prepared by the probation officer clearly shows the bitterness that the family of the deceased still harbour against the Applicant. They were distressed beyond belief in the manner in which the Applicant killed the deceased. They categorically told the probation officer that if the Applicant was released he would be killed. His own family thinks that the Applicant was bewitched when he committed the offence.

This court is of the view that if there is any case that requires the convict to remain in prison for the rest of his life, this one undoubtedly qualifies. It was completely unnecessary for the Applicant to inflict the pain on the deceased in the manner that he did. Those circumstances are so aggravating that the conscious of this court will not allow it to interfere with the sentence that was imposed. The Applicant’s application in the circumstances is dismissed. It is so ordered.

DATED AT NAIROBI THIS 1ST DAY OF OCTOBER 2019

L. KIMARU

JUDGE