

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

PETITION NO. 33 OF 2019

HENRY MURIUNGI BUNDI.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

RULING ON RE-SENTENSING

1. The petitioner, **Henry Muriungi Bundi**, was charged before this Court with the offence of murder contrary to **section 203 as read with section 204 of the Penal Code**. The information charged that on 2/11/2012 at Kithoka Village, Kithoka Location, in Imenti North District within Meru County, the petitioner murdered **Peter Ndumba**
2. After trial, the appellant was found guilty and sentenced to death. Being aggrieved by that decision, the appellant appealed to the Court of Appeal which appeal was dismissed on 11/7/2019.
3. Vide his Motion on Notice dated 10/9/2019, the petitioner petitioned this Court to review his sentence on the basis of the Supreme Court decision in the case of **Francis Muruatetu and Others vs Republic [2017] eKLR**.
4. In that case, 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 denied the Court its discretion in sentencing. The Court proceeded to set out the criteria or the principles that should guide a Court in sentencing. Some of the considerations are *age of the offender, being a first offender, whether the offender pleaded guilty, the character and record of the offender, commission of the offence in response to gender-based violence, remorsefulness of the offender, the possibility of reform and social re-adaptation of the offender and any other factor that the Court considers relevant*.
5. I have considered the foregoing and the circumstances under which the offence was committed. The appellant pursued the deceased to two homes. The deceased first hid under the bed in the house of **PW2** from where he was flashed out. He then tried to hide in the house of **PW4**. All this time the petitioner pursued the deceased allegedly for the deceased having stolen the petitioner's blanket. The deceased died a slow but painful death at the instance of the petitioner.
6. The state urged that the death sentence be maintained.
7. In mitigation, he only stated that the Court considers the time he has been in custody. He is not remorseful. Taking into consideration the circumstances of the case, and the mitigation given. I am satisfied that this a good case where the death sentence should be meted out. The way the offence was committed was too gruesome and inhuman to mete out any alternative sentence than that prescribed by the law.
8. Accordingly, I decline to interfere with the death sentence that was meted out to the petitioner by Wendoh J on 21/7/2016.

DATED and **DELIVERED** at Meru this 3rd day of December, 2019.

A. MABEYA

JUDGE