

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL MISCELLANEOUS APPLICATION NO. E059 OF 2022

PETER KIPKEMOI RUTO.....APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

RULING

1. By an undated Notice of Motion, the Applicant seeks a re-hearing of the sentence meted out against him in High Court Criminal Case Number 118 of 2008. Specifically, the Applicant prays that this Court receive and consider his mitigation in determining a more appropriate and determinate sentence.
2. The gravamen of the Application is that the Applicant was charged with the offence of Murder, contrary to Section 203 as read with Section 204 of the Penal Code. Following a full trial, he was convicted and sentenced to life imprisonment, with the sentence commencing on 12th June 2012.
3. His appeal against the decision to the Court of Appeal was dismissed.
4. He contends that, pursuant to the landmark decision of the Supreme Court in the *Muruatetu* case, this Court is vested with the jurisdiction to review sentences in murder cases following the declaration that the mandatory nature of such sentences is unconstitutional.
5. In urging this Court to substitute his life sentence with a determinate term, the Applicant places reliance on the jurisprudence established in *Francis Karioko Muruatetu & Another vs. Republic [2017] eKLR* and *William Kittiny vs. Republic [2018] eKLR*.
6. The Prosecution Counsel James Kihara swore a Replying Affidavit on 13th July 2023 and filed 25th January, 2024. He deponed that that he does not oppose the application for resentencing; however, he emphasised that the

Court should strictly adhere to the established resentencing guidelines. These factors include:

- The age of the offender;
 - Whether the applicant is a first-time offender;
 - Whether there was a plea of guilty;
 - The character and record of the offender;
 - Whether the offense was committed in the context of Gender-Based Violence (GBV);
 - The offender's remorsefulness;
 - The possibility of rehabilitation and social re-adaptation; and
 - Any other relevant mitigating or aggravating factors.
7. Furthermore, the Respondent moves the Court to be guided by the Judiciary of Kenya Sentencing Policy Guidelines (2016), with particular emphasis on the provisions of Paragraph 4.1.

Analysis and Determination

8. The only issue for determination in this case is whether this Court can order a rehearing of the Applicant's sentence handed to him by Wendoh J on 16th July, 2012, in HCCR Case No.118 of 2008- Republic Vs Peter Kipkemoi Ruto Alias Saitoti.
9. The law on rehearing of sentence was elaborated by the Supreme Court in *Muruatetu 2- Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae) [2021] KESC 31 (KLR)*, that:-

“To obviate further delay and to avoid confusion, the court issued the following guidelines: -

- 1) The decision of Muruatetu and the guidelines herein were applicable to sentences of murder under sections 203 and 204 of the Penal Code only.***
- 2) The Judiciary Sentencing Policy Guidelines were to be revised in tandem with the new jurisprudence enunciated in Muruatetu.***

- 3) All offenders who had been subject to the mandatory death penalty and desired to be heard on sentence were entitled to a re-sentencing hearing.
- 4) Where an appeal was pending before the Court of Appeal, the High Court would entertain an application for re-sentencing upon being satisfied that the appeal had been withdrawn.
- 5) In the re-sentencing hearing, the court had to record the prosecution's and the appellant's submissions under section 329 of the Criminal Procedure Code, as well as those of the victims, before deciding on a suitable sentence.
- 6) An application for re-sentencing arising from a trial before the High Court could only be entertained by the High Court, which had jurisdiction to do so and not the subordinate court.
- 7) In a sentence re-hearing for the charge of murder, both aggravating and mitigating factors such as the following, would guide the court: -
 - i. Age of the offender;
 - ii. Being a first offender;
 - iii. Whether the offender pleaded guilty;
 - iv. Character and record of the offender;
 - v. Commission of the offence in response to gender-based violence;
 - vi. The manner in which the offence was committed on the victim;
 - vii. The physical and psychological effect of the offence on the victim's family;
 - viii. Remorsefulness of the offender;
 - ix. The possibility of reform and social re-adaptation of the offender; and,

x. *Any other factor that the court considered relevant.*

8) *Where the appellant had lodged an appeal against the sentence alone, the appellate court would proceed to receive submissions on re-sentencing.*

9) *The guidelines would be followed by the High Court and the Court of Appeal in ongoing murder trials and appeals. They would also apply to sentences imposed under section 204 of the Penal Code before the decision in Muruatetu.”*

10. In this case, the undisputed facts are that the Applicant was tried and convicted for the offence of Murder, contrary to Section 203 as read with Section 204 of the Penal Code and that on 16th July 2012, this Court, presided over by Wendoh J, sentenced him to Life Imprisonment. His appeal to the Court of Appeal against the said conviction and sentence was dismissed in its entirety.
11. Following the landmark determination of the Supreme Court in *Francis Karioko Muruatetu & Another vs. Republic [2017] eKLR (Muruatetu 1)*, the Applicant has once again approached this Court vide the Notice of Motion, urging this Court to rehear his sentence, quash the order of life imprisonment, and substitute it with a determinate term of years.
12. This Court has considered the Applicant’s prayer alongside the restrictive directions issued by the Supreme Court in the *Muruatetu Sentencing Guidelines (Muruatetu 2) of 2021*(Supra).
13. It is on record that this Court did not impose the mandatory death penalty but instead exercised its discretion at the trial stage by handing down a sentence of life imprisonment. Furthermore, that sentence has already been subjected to the scrutiny of the Court of Appeal and affirmed.
14. Consequently, this Court is *functus officio*. As clarified in the *Muruatetu 2* guidelines, the reopening of sentences is strictly reserved for cases where the mandatory death penalty was imposed. Where a court has already exercised

discretion, as was the case here, and where the appellate process has been exhausted, the High Court lacks the jurisdictional mandate to interfere with the said sentence of life imprisonment.

15. In light of the foregoing, the prayer for resentencing is not available to the Applicant under the current jurisprudential framework. Consequently, the Applicant's Notice of Motion seeking a re-hearing of his sentence is hereby dismissed.

Dated, signed and delivered at Nakuru this 13th Day of April, 2026.

**PATRICIA GICHOHI
JUDGE**

In the presence of:

Peter Kipkemoi Ruto- Applicant

Ms Bosire for Respondent

Erickson- Court Assistant