



**Kibet v Republic (Criminal Appeal 383 of 2019)
[2023] KECA 655 (KLR) (12 May 2023) (Judgment)**

Neutral citation: [2023] KECA 655 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CRIMINAL APPEAL 383 OF 2019
F SICHALE, FA OCHIENG & LA ACHODE, JJA
MAY 12, 2023**

BETWEEN

PAUL KOSKEI KIBET APPELLANT

AND

REPUBLIC RESPONDENT

(An appeal from the Ruling of the High Court of Kenya at Eldoret, (Omondi, J. as then she was) dated 14th November 2018 IN HC. CR PETITION NO. 12 OF 2014)

JUDGMENT

1. Paul Koskei Kibet (the appellant herein) has preferred this appeal against the ruling of Omondi J (as she then was) in which she dismissed his petition for re-sentencing. The brief facts giving rise to this appeal are that in High Court Criminal Case Number 29 of 2007, the appellant was charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#) Ca 63 of the Laws of Kenya.
2. The appellant was tried for the offence and convicted and sentenced to suffer death. Being aggrieved with the aforesaid conviction and sentence, the appellant preferred an appeal to this Court vide Eldoret Criminal Appeal No 126 of 2011, which was dismissed for lack of merit.
3. Subsequently, thereafter, his sentence of death was commuted to life imprisonment by His Excellency the President. Undeterred, the appellant thereafter filed a Petition for re-sentencing which Petition was dismissed by Omondi, J (as she then was) for lack of merit thus, provoking the instant appeal that is before us.
4. When the matter came up for plenary hearing on February 14, 2023, Mr. Kosgei learned counsel appeared for the appellant and briefly orally highlighted his written submissions dated April 7, 2021 and submitted that the High Court was bound by the decision of the Supreme Court in [Francis](#)



Karioko Muruatetu & Another v Republic [2017] eKLR in which in paragraphs 45 and 46 it was reiterated.

45 – We think that a person facing the death sentence most deserves to be heard in mitigation because of the finality of sentence.”

46. states that -

“We are of the view that mitigation is an important congruent of fair trial.”

“Article 27 of the Constitution provides for equality and freedom from discrimination since every person is equal before the law and has the right to equal protection and equal benefit of the law. Convicts sentenced pursuant to section 204 are not accorded equal treatment to convicts who are sentenced under other sections of the Penal Code that do not mandate a death sentence. Refusing or denying a convict facing the death sentence, to be heard in mitigation when those facing lesser sentences are allowed to be heard in mitigation is clearly unjustifiable discrimination and unfair. This is repugnant to the principle of equality before the law. Accordingly, section 204 of the Penal Code violates Article 27 of the Constitution as well.”

4. He further submitted that an order for sentence rehearing would give the appellant a chance to mitigate and enable the Court consider his mitigation in comparison with the mitigation guidelines set out by the Supreme Court and that further the appellant was remorseful and a reformed person and a father of 5 children.
5. Ms. Kiptoo on the other hand for the Respondent while opposing the appeal briefly orally highlighted her written submissions dated February 9, 2023 and submitted that contrary to the appellant’s submissions and in line with the Supreme Court decision in Muruatetu case (supra) the Court had in proper cases, the discretion to pass the death sentence as the death sentence was not outlawed; that in the instant case, the High Court considered the application for re-sentencing and gave reasons as to why it thought that the sentence passed was proper.
6. We have considered the record, the rival oral and written submissions, the authorities cited and the law.
7. It is indeed not in dispute that vide Eldoret High Court Criminal Case No 29 of 2007, the appellant was sentenced to death for the offence of murder. Being aggrieved with the aforesaid conviction and sentence the appellant moved on appeal to this Court vide Eldoret Criminal Appeal No 126 of 2011 which was dismissed by this Court for lack of merit.
8. Subsequent thereafter, his sentence of death was commuted to life imprisonment by His Excellency the President. Undeterred, the appellant filed a petition dated September 12, 2018, seeking re- sentencing which Petition was again dismissed by the High Court Omondi, J (as she then was) on November 14, 2018.
9. This Court in Bernard Kimani Gacheru v Republic [2002] eKLR now restated -

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentences must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case or that



the trial court overlooked some material factor, or took into account some wrong material, or acted on wrong principle.”

10. Similarly, in *Shadrack Kipkoech Kogo v Republic*, Eldoret Criminal Appeal No 253 of 2003, this Court stated –

“Sentence is essentially an exercise of discretion by the trial court and for this Court to interfere it must be shown that in passing the sentence, the sentencing court took into account an irrelevant fact or that a wrong principle was applied or that short of these, the sentence itself is so excessive and therefore an error of principle must be interfered. (See also *Sayeka v R* [1989 KLR 306].”

11. In our view, the High Court, Omondi, J properly considered the merits and demerits of the application before her. In particular, she pointed out the gravity of the circumstances surrounding the murder of the deceased. She stated: -

“Taking into account the circumstances under which the offence occurred, the nature of violence meted out – beating his wife to pulp (as described by the trial court), and also taking into account the upsurge of gender based violence, I am persuaded that the life sentence is apt and acts as a deterrent sentence.”

12. Additionally, the learned Judge, and rightly so in our view, was guided by the guidelines applicable in re-hearing sentence as set out in the decision of *Francis Karioko Muruatetu & Another v Republic* [2017] eKLR.

13. In para paragraph 13 of her Judgment, the learned Judge listed the guidelines to be considered 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.”

14. She observed that the appellant had not satisfied the guidelines set out by the Supreme Court in the *Muruatetu* decision (supra) and she concluded that: -

...this was obviously a gender based violent situation where the hapless wife pleaded for help, and attempts to intervene by other third parties, including caution and pleas, fell on deaf ears. The petitioner has not suggested that he is remorseful instead finding fault for the sentence. I do not think he is deserving of any further intervention.”

15. We are of the view that the Judge exercised her discretion judiciously.

16. In our considered view, the appellant dealt with the deceased in the most callous manner. We too think the sentence of death which was subsequently reduced to life imprisonment was well deserved. We find no merit in this appeal. It is hereby dismissed.



It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 12TH DAY OF MAY, 2023.

F. SICHALE

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JUDGE OF APPEAL

F. OCHIENG

.....

JUDGE OF APPEAL

L. ACHODE

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

