



**Nguta v Republic (Miscellaneous Criminal Application
E031 of 2024) [2025] KEHC 11333 (KLR) (30 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11333 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
MISCELLANEOUS CRIMINAL APPLICATION E031 OF 2024**

RM MWONGO, J

JULY 30, 2025

BETWEEN

JOHN NJUE NGUTA APPLICANT

AND

REPUBLIC RESPONDENT

JUDGMENT

Background

1. The applicant was charged with murder contrary to section 203 as read with section 204 of the [Penal Code](#). The particulars were that on 13th January, 2006 at Kamunyage village Kianjiru location in Mbeere District he murdered his wife Susan Mutheu Njue. He was convicted and sentenced to death by hanging as prescribed in the [Penal Code](#).
2. He appealed against the decision at the Court of Appeal. Through its judgment delivered on 11th July 2019, the Court of Appeal noted that the mandatory nature of the death sentence had been reconsidered through the case of [Muruatetu & another v Republic; Katiba Institute & 5 others \(Amicus Curiae\)](#) [2017] KESC 2 (KLR) (Muruatetu 1). The Court of Appeal found that the conviction was safe but the applicant was entitled to mitigation before sentencing. The case was therefore referred back to the High Court, being the trial court for purposes of recording the applicant's mitigation before resentencing.
3. This is the re-sentencing decision upon referral by the Court of Appeal.

Mitigation

4. The applicant expressed remorse for the death of the deceased and prayed that the court exercises leniency in its resentencing because he is a first offender. He stated that he has been incarcerated for 18 years since conviction and during this time, he has reformed, a matter that is attested to by the prison



officers and his fellow inmates. He stated that he looks forward to a determinate sentence since he had sound plans on how to live productively life out of prison.

5. The officer in charge at Embu Main prison wrote a letter in support of the applicant's lenient resentencing. He stated that the applicant is reformed and ready to reintegrate back into society. The applicant relates well with staff and fellow inmates at the facility. He also relates well with his relatives at home who frequently visit him while in prison. During his incarceration, he has been diagnosed with hypertension and gastritis which conditions have limited his industrial training. Nonetheless, he is industrious, obedient, honest and disciplined and he has embraced the value of correction and rehabilitation.

The Probation Officer's Presentence Report

6. The Presentence report detailed that the applicant is one the younger siblings in his family and throughout his life, he has enjoyed the support of his elder brothers. He has a piece of land which is still being safeguarded by his elder brother so that one day, he will return to it. He is said to be a quiet and sociable person whose actions shocked his family.
7. The deceased was his wife with whom he related well generally. It is said that at some point, the applicant became controlling and would follow her wherever she went, suspecting infidelity. The deceased left 7 children who remained under the care of their paternal grandfather who is still bitter about the loss of his daughter. The deceased's father stated that since the deceased died, the applicant's family has never approached him to apologize.
8. The applicant's children have all advanced their education through the support of their relatives. The community viewed the applicant and his late wife as having lived peacefully and they were shocked that the applicant killed her. However, they said that the applicant would not have a problem reintegrating back into the community since they believed that he had reformed. The applicant is 67 years old and the community believed that he would be present in his adult children's lives in whatever way possible.

Analysis and Determination

9. This mitigation and resentencing hearing is in compliance with the Court of Appeal order in the applicant's appeal in Nyeri Criminal Appeal No 55 of 2014 on the strength of the Supreme Court's findings in the *Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae)* (Muruatetu 1) case. In that specific case, the court stated:

“Remitting the matter back to the High Court for the appropriate sentence seems to be the practice adopted where the mandatory death penalty has been declared unconstitutional. We therefore hold that the appropriate remedy for the petitioners in this case is to remit this matter to the High Court for sentencing. It is prudent for the same court that heard this matter to consider and evaluate mitigating submissions and evaluate the appropriate sentence befitting the offence committed by the petitioners.”

10. The applicant was sentenced to the mandatory death sentence as prescribed under section 204 of the *Penal Code*. In *Muruatetu & another v Republic; Katiba Institute & 4 others (Amicus Curiae)* [2021] KESC 31 (KLR) (Muruatetu 2), the Supreme Court issued guidelines for factors to be considered during resentencing hearings as follows:

“In re-hearing sentence for the charge of murder, both aggravating and mitigating factors such as the following, will guide the court;



- (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) The manner in which the offence was committed on the victim;
- (g) The physical and psychological effect of the offence on the victim's family;
- (h) Remorsefulness of the offender;
- (i) The possibility of reform and social re-adaptation of the offender;
- (j) Any other factor that the court considers relevant.”

11. The applicant is 67 years old and he has prayed for a non-custodial sentence. He has already been incarcerated for 18 years. He has expressed remorse for the offence and he is positive that he will reintegrate well back into the community given the chance. The prison officer in charge has vouched for the applicant and stated that he has since reformed. The family of the deceased is still very bitter with the applicant about the death of the deceased. The deceased's father said that he wants nothing to do with the applicant and that if he is released, he should take over the care of his children and grandchildren.
12. The death penalty was not outlawed through the Muruatetu jurisprudence. Rather, the mandatory nature of that sentence is what the Supreme Court termed as unconstitutional. During resentence hearing, the court must consider the mitigating factors and the aggravating factors. The mitigation is noted.
13. The aggravating factors stem from the circumstances under which the deceased met her death in the hands of her husband with whom she had 7 children. She was hacked with a panga repeatedly on different parts of her body. Some prosecution witnesses saw the applicant chasing the deceased with a panga and cutting her with it. The deceased, prior to her death, cried out severally asking the deceased not to attack her but he did and the attack led to her death.
14. I was able to read the proceedings of the trial Court. I also saw P. Exhibit 2 (i) – (iv), being gruesome photographs of the deceased showing serious cuts, nay horrible hacking, of the deceased on the head and arms. In review of the sentence herein, I also take into account the said gruesome photographs. Of course, I did not have the benefit of hearing the testimony of witnesses or seeing their demeanor.
15. Ultimately, all these matters must be taken into account in this re-sentencing determination.
16. The Presentence report speaks of the possibility of the applicant successfully reintegrating back into the community. The factors to be considered during resentencing have been wholesomely considered herein.

Disposition

17. In the end, I hereby re-sentence the applicant to 35 years imprisonment from the date of his conviction. This sentence would have been longer had I not considered all the time spent in custody in accordance



with section 333(2) of the *Criminal Procedure Code*. The applicant shall be entitled to the usual remission under the *Prisons Act*.

18. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 30TH DAY OF JULY, 2025.

R. MWONGO

JUDGE

Delivered in the presence of:

1. Ms. Nyika for the Respondent
2. Applicant present in Open Court
3. Francis Munyao - Court Assistant

