



REPUBLIC OF KENYA



**Kalawa v Director of Public Prosecutions (Petition E104 of 2023)  
[2024] KEHC 2224 (KLR) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 2224 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
PETITION E104 OF 2023  
TW CHERERE, J  
FEBRUARY 29, 2024**

**BETWEEN**

**LEONARD NJATI KALAWA ..... PETITIONER**

**AND**

**THE DIRECTOR OF PUBLIC PROSECUTIONS ..... RESPONDENT**

**RULING**

1. Petitioner and another were charged with murder in *Republic v JM & 2 others* [2015] eKLR and was convicted and sentenced to suffer death. Their appeal to the Court of Appeal *vide* Criminal Appeal No. 32 of 2015 was dismissed.
2. Petitioner seeks resentence following the Supreme Court decision in *Francis Karioko Muruatetu & 5 Others –vs-Republic*, Petition No. 5 of 2015 (2017) eKLR where the said superior court held that the mandatory death sentence for the offence of murder as provided in Section 204 of the *Penal Code* is unconstitutional as it deprives courts of their inherent jurisdiction not to impose a death sentence in an appropriate case.
3. Petitioner pleads for leniency on the ground that having served 14 years imprisonment, he has reflected on his actions and regrets them. He states he has undertaken two bible courses as a means of reformation but did not file the copies of certificates in support thereof.
4. Ms. Rita for the DPP opposed the application on the grounds that the victim died a painful death and there is no evidence that Petitioner has reformed.
5. I have considered the petition and the opposition on behalf of the DPP. The aggravating factors in this matter are that the victim was gagged with a seat belt over the mouth at the back of neck, the tongue was compressed backwards by the gag, he had a deep occipital cut 7 cm long and another on the nostrils and had died of massive subdural subarachnoid and intracerebral haemorrhage.



6. No doubt the victim died a very painful death.
7. In the South African case of *S v Scott-Crossley* 2008 (1) SACR 223 (SCA) at para 35 set out the purpose behind a sentence as follows:

‘Plainly any sentence imposed must have deterrent and retributive force. But of course one must not sacrifice an accused person on the altar of deterrence. Whilst deterrence and retribution are legitimate elements of punishments, they are not the only ones, or for that matter, even the over-riding ones. . . [i]t is true that it is in the interests of justice that crime should be punished. However, punishment that is excessive serves neither the interests of justice nor those of society.’

8. Flowing from the foregoing, I find that it would not serve any meaningful purpose to confine Petitioner to a life of hopelessness. I am therefore persuaded to resentence Petitioner to a determinate sentence.
9. In the end, Petitioner is resented to serve 25 years from the date of his arrest on 08<sup>th</sup> April, 2011.

**DELIVERED AT MERU THIS 29<sup>TH</sup> DAY OF FEBRAURY 2024**

**WAMAE. T. W. CHERERE**

**JUDGE**

**Appearances**

Court Assistants - Kinoti/Munene

Petitioner - Present in person

For DPP - Ms. Rita (PC- 1)

