



**Nyaga & another v Director of Public Prosecutions (Petition  
98 of 2023) [2024] KEHC 3567 (KLR) (21 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3567 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
PETITION 98 OF 2023  
TW CHERERE, J  
MARCH 21, 2024**

**BETWEEN**

**DICKSON NYAGA ..... 1<sup>ST</sup> PETITIONER**

**JASON MURIIRA ..... 2<sup>ND</sup> PETITIONER**

**AND**

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

**RULING**

1. Petitioners were charged with murder in Meru Criminal Case No. 15 of 2011. They were both convicted and sentenced to suffer death. Their appeal to the Court of Appeal *vide* Criminal Appeal No. 32 of 2015 was dismissed.
2. Petitioners seek 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. Petitioners plead for leniency on the ground that having served 9 years imprisonment, they have reflected on their actions and regret them. The 1<sup>st</sup> Petitioner has undertaken training as a means of reformation as demonstrated by numerous certificates but the second Petitioner has not.
4. The Respondent through Ms. Rita learned counsel opposed the application on the grounds the Petitioners who were armed with a gun harassed and robbed the deceased's family subsequent to which they killed the deceased.
5. I have considered the petition and the opposition on behalf of the DPP. 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. No doubt the victim died a very painful death.

6. Additionally, Jason Muriira, the 2<sup>nd</sup> Petitioner who was step-brother of the deceased who had previously threatened deceased with death led the attack on deceased's family, harassed and threatened them with harm, robbed them and then abducted the Deceased from his family, in his vehicle, after which they killed him and dumped his body in a dump site. Petitioners were armed with a firearm during the incident.
7. No doubt the events of that day will traumatize the family of the Deceased for a long time.
8. 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.’

9. Flowing from the foregoing, I find that it would not serve any meaningful purpose to confine Petitioners to a life of hopelessness. I am therefore persuaded to resentence Petitioners to a determinate sentence.
10. In the end, Dickson Nyaga is resented to serve 20 (twenty) years from the date of his conviction on 22<sup>nd</sup> January, 2015.
11. Jason Muriira on the other hand is resented to serve 30 (thirty) years from the date of his conviction on 22<sup>nd</sup> January, 2015.

**DELIVERED AT MERU THIS 21<sup>ST</sup> DAY OF MARCH, 2024**

**WAMAE. T. W. CHERERE**

**JUDGE**

**Appearances**

Court Assistants - Kinoti/Munene

1<sup>st</sup> Petitioner - Present in person

2<sup>nd</sup> Petitioner - Present in person

For DPP - Ms. Rita (PC- 1)

