



REPUBLIC OF KENYA



KENYA LAW
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Ochido v Republic (Petition 91 of 2019) [2024] KEHC 5130 (KLR) (25 April 2024) (Ruling)

Neutral citation: [2024] KEHC 5130 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA**

PETITION 91 OF 2019

SC CHIRCHIR, J

APRIL 25, 2024

**IN THE MATTER OF ARTICLES 22(1), 1(3), 3(2),(4),9(1),25, 26, 27(1),28,
29, 160(1), 159, 156 OF THE CONSTITUTION OF KENYA AND SECTION
261 OF THE CRIMINAL PROCEDURE CODE CAP 75 LAWS OF KENYA.**

BETWEEN

CALEB OJWAND OCHIDO PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. Through the undated Notice of Motion filed on 22nd November 2019, the petitioner seeks for re-sentencing. It is apparent that the Application was prompted by the directions given by the Supreme Court decision in the case of *Francis Kariuki Muruatetu and Ano vs Republic* (2017) eKLR.
2. In the *Muruatetu case* (Supra) the Supreme Court held that the death sentence prescribed under section 204 of the *Penal* Court is unconstitutional as it takes away the discretion of the court when it comes to sentencing.
3. Further the Supreme Court in *Francis Karioko Muruatetu and another versus Republic* (2021) eKLR gave the liberty to any convict who had been sentenced to death to apply for resentencing.
4. Under paragraph 18 (iii) of the directions the court directed as follows: “ all offenders who have been subjected to the mandatory death penalty and desire to be heard on sentence will be entitled to resentencing hearing”

Determination

5. The petitioner has filed what he has called “Mitigation Submissions”. However, I need to point out that what the court needs to consider are the mitigations that the petitioner made before the court at the time of trial. This is because the rationale behind the decision in *Muruatetu case* , as I understand



it, is that notwithstanding the mitigation that the convict may have submitted to court, the said mitigation had no bearing on the sentence as the prescribed sentence was mandatory. What this court is required to do therefore is to look at the mitigation made at the time , and make a finding on the appropriate sentence. The purported “fresh mitigation”, including the conduct of the convict since being sentenced, has no bearing in this resentencing hearing.

6. In his submissions, through his advocate, the petitioner told the court as follows: ”That he was 46 years old, he was remorseful, he has a family and his oldest child was 20 years old and his youngest was 7 years old. The children require parental care. The accused has been in custody a long time.”
7. I have considered the petitioner’s mitigation as above. There was no indication that he was a repeat offender, so I’ll take it that he was a first offender. I’ve also taken into consideration his age. As per the psychiatric report dated 20th march 2003, the petitioner was 43 years. He should therefore be about 64 years now.
8. However, I’ve also considered the circumstances of the offence. It is not known why the petitioner struck his mother on the head. In his defense he called it an accident. Both the high court and the court of appeal thrashed his defense.
9. It further came out in the evidence that he made no attempt to seek medical attention for his mother. Instead he put her in a sack while she was still alive. Obviously putting his mother in a sack was an attempt to dispose of the body and conceal his crime.
10. Taking into account all the foregoing I hereby set aside a, the death sentence and substitute it with 25 years imprisonment.
11. Final orders:
 - a. The death sentence passed on 4th April 2005 is hereby set aside
 - b. The petitioner is sentenced to 25 years in prison . The sentence to take effect from 23th June 2000.

DATED, SIGNED AND DELIVERED AT NAIROBI, VIA MICROSOFT TEAMS, THIS 25TH DAY OF APRIL 2024.

S.CHIRCHIR

JUDGE

In the presence of :

Godwin- Court Assistant

The petitioner.

