



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

CRIMINAL APPEAL NO.200 OF 2005

BONFACE OWINO OLOOAPPELLANT

AND

REPUBLICRESPONDENT

R U L I N G

[1] The applicant **Bonface Owino Oloo** appeared before this court in the year 2005 facing a charge of murder, contrary to **S.203** read with **S.204** of the **Penal Code**.

After a full trial the applicant was convicted and sentenced to suffer death in the manner authorized by law.

Being aggrieved with the conviction and sentence the applicant preferred an appeal to the Court of Appeal at Kisumu, but the appeal was dismissed in its entirety.

Having exhausted the appeal process the applicant resigned himself to fate. However, by a presidential prerogative the Death sentence imposed on him was committed to life imprisonment which he is currently service.

[2] On or about the year 2015, the Supreme Court of Kenya in its decision in the case of **Francis Karioko Muruatetu & Another Vs. Republic Petition Nos.15/16/2015**, outlawed the mandatory nature of the death sentence under **S.204** of the **Penal Code** on the basis of which the applicant was originally sentenced. In so doing, the Supreme Court noted that the mandatory nature of the death sentence deprived the trial courts of their legitimate jurisdiction to exercise discretion not to impose the death sentence in appropriate cases.

The court clarified that its decision only applied to death sentences for the offence of murder under **S.203** and **204** of the **Penal Code** and directed that all offenders who were subjected to the mandatory death penalty and desired to be heard on sentence will be entitled to re-sentencing hearing.

[3] Apparently, the applicant took advantage of the aforementioned decision and applied to this court by summons in chamber for a re-hearing on sentence on the basis that he has already served twenty (20) years imprisonment.

In his submissions, the applicant expresses remorse for the offence and states that he is repentant and has since reformed having undertaken industrial training at the prison industries and renewed his faith by obtaining a certificate in gospel teaching. He therefore prays to this court to find that the period already served by him in prison is sufficient to have him set free. Alternatively, he prays for any other appropriate sentence on the basis of his plea in mitigation made herein.

[4] The respondent, through the office of the director of public prosecution (**ODPP**) acknowledged the aforementioned Supreme Court decision but maintained that it did not render the death sentence unlawful.

The respondent submitted that the applicant did not indicate whether he was prevented or allowed to mitigate before the death sentence was imposed upon him. Nonetheless, the respondent conceded that this court was empowered to consider the present application but contended that the death sentence imposed on the applicant was appropriate in the circumstances of the case.

[5] Having considered the application on the basis of the supporting grounds and the submissions presented by both sides respectively, it is notable from the copy of the proceedings that the applicant was not given an opportunity to mitigate even though he was found guilty of an offence which carried a mandatory death sentence. This application has provided that elusive opportunity. In that regard, it is discernable that the applicant regrets the offence and is bent on changing his character from that of a criminal to a God fearing and law abiding citizen. The offence he committed was serious. The circumstances under which it was committed were not clear but it was evident that the victim of the offence was attacked and fatally assaulted by a person who used a sharp object. That person was identified as the applicant meaning that the victim met his gruesome death in the hands of the applicant.

[6] Although the death sentence imposed upon the applicant by the trial court was lawful the passage of time since then, the applicant's mitigating factors and his zeal to reform absolutely for acceptance back to the community compels this court to substitute the sentence to that of imprisonment. In that regard, the applicant shall serve twenty five (25) years imprisonment from the date of the material judgement and sentence **i.e. 7th July 2005.**

Ordered accordingly.

J.R. KARANJAH

J U D G E

[DATED & DELIVERED THIS 23RD DAY OF MARCH 2022]