



REPUBLIC OF KENYA

COURT OF KENYA AT KERICHO

CRIMINAL PETITION NO.38 OF 2019

BENARD KIPKURUI CHERUIYOT.....PETITIONER

- V E R S U S -

REPUBLIC.....RESPONDENT

RULING OF SENTENCE RE-HEARING

1. The Petitioner herein **BENARD KIPKURUI CHERUIYOT** was charged with Murder Contrary to Section 203 as read with Section 204 of the Penal Code.
2. The particulars of the offence were that on 10/1/2008 at Siryat Village, Sotik District, within Rift Valley Province (now Kericho County) the Petitioner murdered **GILBERT KIPKEMOI SIGEI**
3. The Prosecution evidence in brief was that the Deceased and on the material day, the Petitioner together with other people had been drinking a brew known as Busaa and later they began to drink Changaa and on their way home, a dispute arose and the deceased started fighting with the Petitioner.
4. After they were separated by PW.2 and PW.3 they had a second quarrel and the Petitioner ran to his Mother's house and returned with a knife which he used to stab the Deceased on the Chest.
5. The Deceased was admitted for two days and subsequently he died out of the injuries. The cause of the quarrel between the Petitioner and the Deceased was not clear but it was alluded that it was a dispute over Kshs.100/= or because the Deceased screamed (made a noise) while on his way home from the drinking spree.
6. The Petitioner claimed that he had some money at home which he took and went to drink and later returned and went to sleep. He said he was arrested at Bomet the following day.
7. The Court found the Petitioner guilty as charged and sentenced him to death on 2nd of July, 2009. The Petitioner appealed to the Court of Appeal against both the conviction and the sentence and the appeal was dismissed.
8. The Petitioner is now seeking sentence re-hearing following the Francis Kariokor Muruatetu case which said that the death penalty is not mandatory.
9. I have considered the written mitigation filed by the Petition filed by the Petitioner on 29/9/2020 together with Pre-sentence Report filed by the Probation Officer.
10. The Petitioner stated in his Mitigation that he is truly remorseful for the offence and further that during his period of incarceration he has learnt skills in Mechanics grade I, Welding Grade III and spray Grade II and he has been reformed.
11. The Petitioner further stated that he was 23 years and he was not married when he was sentenced to death and he has been in custody for 12 years. He is seeking a second chance in life.
12. The Probation Officer filed a Pre-sentence Report in which he gave the social background of the Petitioner.
13. The Probation Officer's Report stated that the two families that of the Petitioner and the Deceased are living harmoniously and further that a cleansing ceremony has been conducted.
14. I have considered the circumstances of this case and I find that it is on record that the Petitioner and the Deceased had been drinking

Busaa and then Changaa when the incident occurred.

15. The two were under the influence of Alcohol at the time of commission of the offence.

16. The Petitioner was 23 years old at the time of commission of the offence and he had been in custody for one year before he was sentenced to death.

17. The Supreme Court held that the mandatory nature of the death penalty is unlawful although the death penalty was not done away with. The same is still available in deserving cases.

18. In the current case, I find that there are mitigating circumstances to merit resentencing.

19. The Petitioner and the Deceased were under the influence of alcohol when the incident occurred. The Petitioner has been in custody for a period of over 12 years and he has stated that he is truly remorseful for the offence he committed and further, he has reformed and learnt skills in prison that will assist him when he is released.

20. The two families that of the Deceased and the Petitioner have also reconciled and done traditional cleansing.

21. I find that the Petitioner deserves a second chance in life and I accordingly sentence him to 12 years imprisonment.

22. Since the Petitioner has been in custody for more than 12 years, I order that the Petitioner be released forthwith unless lawfully held for any other reason.

Delivered, signed and dated at Kericho this 22nd day of January, 2021.

A. N. ONGERI

JUDGE