



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

PETITION NO. 72 OF 2019

SAFARI KAZUNGU KATOI.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT ON RESENTENCING

1. H. A. Omondi, J sitting in the High Court of Kenya at Malindi tried and convicted Safari Kazungu Katoi, hereinafter "*the appellant*", on an information charging him with murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence were that on 21/8/2009 at Katama Village, Chakama Location, Malindi District of the Coast Province, the Appellant murdered Loise Charo, hereinafter "*the deceased*". The Appellant was, upon conviction, sentenced to death.
2. The Petitioner appealed to the Court of Appeal vide Mombasa Criminal Appeal No.40 of 2011(R) Safari Kazungu Katoi v Republic.
3. The said appeal was dismissed, and the conviction and sentence confirmed.
4. The Petitioner is now before this Court pursuant to the Supreme Court decision in **Francis Karioko Karioko Muruatetu & Another v Republic [2017] eKLR** in which the apex court stated that the mandatory nature of the death sentence is unconstitutional.
5. Both parties in this matter agree that this Court has the jurisdiction to resentence the Petitioner.
6. The Petitioner was convicted of the murder of his wife, the mother to his only child. The Petitioner submitted that his child has no parent now and that he should be released to go and take care of his child. The Petitioner submitted that he was very remorseful of his action, and that it took place at the spur of the moment. The Petitioner also states that he suffers from Tuberculosis (T.B) which he acquired in prison.
7. The Petitioner has done several courses in prison, is a first offender, and prays to be released to go and take care of his child.
8. On their part, **M/S Wanjohi** learned counsel for the State submitted that the crime committed by the Petitioner was grave and should be punished by a jail term of 35 years.
9. I have carefully considered the submissions by the Petitioner and the Respondent. This Court appreciates the fact that the Petitioner is remorseful for the crime he committed. That notwithstanding, appropriate sentence must be given to secure the society from any such crimes. Any sentence must also take the interest of the victim. In this case the victim is not there. It is this court which must give justice to the victim.
10. I have considered all mitigating circumstances given by the Petitioner, and that the murder was not premeditated. This Court must send out a clear warning to would be murder offenders of the consequences of their action. I am satisfied that the Petitioner should be jailed for a term of 32 years from date of arrest.
11. I therefore hereby set aside the death sentence imposed upon the Petitioner. Instead thereof, I jail the Petitioner to serve a jail term of 32 years from the date of arrest.

Right of appeal in 14 days.

Dated, Signed and Delivered at Mombasa this 18th day of March, 2021.

E. K. OGOLA

JUDGE

Judgment delivered via MS Reams in the presence of:

Petitioner in person

Ms. Wanjohi for DPP

Ms. Peris Court Assistant