



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CRIMINAL PETITION NO. E006 OF 2020

CHARLES TUJU MESO.....PETITIONER

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

The Petitioner, **CHARLES TUJU MESO**, has asked this Court to grant Orders for re-sentencing him, in respect of the **HIGH COURT CRIMINAL CASE NO. 28 OF 2006, KISUMU**.

1. He told the Court that the trial court had sentenced him to death, for the offence of **MURDER** contrary to **Section 203** as read with **Section 204** of the **Penal Code**.
2. He further said that in the year 2016, His Excellency the President of the Republic of Kenya commuted the Death Penalty to Life Imprisonment.
3. The Court caused a search to be conducted, to ascertain whether or not the Petitioner had lodged an appeal to the Court of Appeal. I was notified that the Petitioner never lodged an appeal.
4. I have also ascertained from the record of the proceedings that the Petitioner stayed in custody from the time he was arrested until he was convicted on 12th March 2015.
5. As he was arrested in 2006, it follows that by the time the Petitioner lodged the present Petition in December 2020, he had been in custody for 14 years.
6. A perusal of the record of the proceedings before the trial court reveals that the learned trial Judge gave to the Petitioner an opportunity for Mitigation.
7. Mr. Odeny, the learned advocate who was then representing the Petitioner, spelt out a detailed mitigation. He noted that because the victim was the wife of the Petitioner, their children had lived without any parent for over 9 years when the Petitioner remained in custody.
8. In his considered view, a non-custodial sentence would have been most appropriate, because the Petitioner had already been behind bars for the period of 9 years.
9. When handing down the sentence, the learned trial Judge noted that although the Constitution of the Republic of Kenya expressly acknowledges that every person has a right to life, it must also be appreciated that the life of the Petitioner cannot have any better claim than the victim's right to life.
10. The trial court then proceeded to sentence the Petitioner to death, as by law prescribed. When handing down the death penalty, the trial court observed that;

“The only punishment or sentence is death”

11. In the circumstances, it follows that the Petitioner was sentenced to Death because there was no discretion which the court had in the matter.

12. But following the decision by the Supreme Court, in *the Muruatetu case*”, the discretion of the court has been restored.

13. Secondly, by dint of the provisions of **Section 333 (2)** of the **Criminal Procedure Code**, the period which an accused person has spent in custody, pending his trial and his conviction, must be taken into account when the court was called upon to re-sentence such person.

14. I have taken into account the period which the Petitioner has spent in custody, which is 14 years.

15. I find that the appropriate sentence, which I hereby pass, is 30 Years Imprisonment. Accordingly, the Death Penalty is hereby set aside, and it is substituted with Imprisonment for 30 Years.

16. The period of Imprisonment shall run from the date when the Petitioner was first arrested.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 16TH DAY OF MARCH 2021

FRED A. OCHIENG

JUDGE