



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

(CORAM: CHERERE- J.)

CRIMINAL PETITION NO. 15 OF 2020

BETWEEN

EZEKIEL KIRIMI.....PETITIONER

AND

REPUBLIC.....RESPONDENT

JUDGMENT

- 1) On the 18th December, 2007, the Petitioner without any provocation murdered FKM by cutting him on the neck, chest, head, amputating his left arm at the elbow and fracturing his mandible and orbit. The offence was committed in the presence of the deceased's 13-year-old son.
- 2) The court found Petitioner guilty and sentenced him to suffer death.
- 3) Petitioner prays for resentence on the ground that he is remorseful and has been in custody for 13 years.
- 4) Ms. Mbithe, learned counsel for the state submitted that the sentence imposed on the Petitioner was constitutional and urged the court to uphold it.

Analysis and Determination

- 5) Death is a lawful sentence for murder. The Supreme Court decision in **Francis Kariuki Muruatetu & Another v Republic & 5 others [2016] eKLR** declaring the mandatory death sentence unconstitutional has necessitated resentencing of all persons previously sentenced to the mandatory minimum and maximum sentences.
- 6) I have considered **The Sentencing Policy Guidelines, 2016** and its application which is intended to promote transparency, consistency and fairness in sentencing (See **Michael Kathewa Laichena & another v Republic [2018] eKLR**).
- 7) Under the proviso to **section 333(2)** of the **Criminal Procedure Code (Chapter 75 of the Laws of Kenya)**, the court is entitled to take into account the period the Petitioner has spent in custody in determining the sentence. The court record shows that the petitioner has served about 8 years and was in custody for 3 years before his conviction in 2013.
- 8) The Petitioner did not annex any certificate to demonstrate that he had undertaken any course as a means of reformation. He however submitted that he is remorseful and regrets his actions.
- 9) I have considered the mitigating and aggravating factors. It is not lost to this court that the Petitioner without any provocation, viciously attacked the deceased in the presence of the deceased's 8-year-old son and literally mutilated some of his body parts causing his death.
- 10) The psychological effect of the Appellant's actions on the child cannot be underestimated and will leave with him for the rest of his life.
- 11) Whereas no length of sentence can restore life, I re-sentence the Petitioner to **forty (40) years'** imprisonment from 24th October, 2013 when he was convicted which time in my considered view will give him time to reflect on his actions and come out of prison a better person.

DELIVERED AT MERU THIS 22ND DAY OF APRIL 2021

T. W. CHERERE

JUDGE

T.W.Chere

In the presence of-
Court Assistant - Kinoti
Petitioner - Present
For the State - Ms. Mbithe