

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

(CORAM: CHERERE-J)

PETITION APPLICATION NO. 137 OF 2018

BETWEEN

MARTIN KIRIMI MUGAMBI.....PETITIONER

AND

REPUBLIC.....RESPONDENT

RULING

Introduction

1. The Petitioner was tried for robbery with violence in **MERU CRIMINAL CASE NO.2855 OF 2005**, was convicted and sentenced to suffer death for the offence of robbery with violence contrary to section **296(2)** of the Penal Code.
2. Applicant's appeals to the High Court vide **MERU HIGH COURT CRIMINAL APPEAL NO. 201 OF 2008** and subsequently to the Court of Appeal vide **NYERI CRIMINAL APPEAL NO. 334 OF 2013** were dismissed on 12th July, 2012 and 13th November, 2013 respectively as a result of which the conviction was upheld and sentence confirmed.
3. Applicant has petitioned the court for resentencing. Ms. Mbithe, learned counsel for the state opposed the application and urged the court to find that the sentence was lawful.

Analysis and Determination

4. Whereas I agree with the state that the sentence imposed on the Applicant is lawful, the Supreme Court's 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.
5. 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**).
6. The offence was committed by the Petitioner and others. There is evidence that the gang was armed with a firearm but the same was not used to inflict injuries on the complainant.
7. I have considered that the offence was not aggravated and the Petitioner has as a way of reformation undertaken training in Carpentry and has attained Grade 1. I am therefore persuaded that this is a proper case for resentence.
8. 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 Applicant has spent in custody in determining the sentence.
9. The court record shows that the Petitioner was charged in 2005 and has been in custody since then which is a period of 16 years and I have no doubt that he has had time to reflect on his actions.
10. Consequently, the Petitioner is resented to **period already served**. It is hereby ordered that he be set at liberty unless otherwise lawfully held.

DELIVERED AT MERU THIS 22nd DAY OF April 2021

T. W. CHERERE

JUDGE

In the presence of-

Court Assistant - Kinoti

Petitioner - Present

For the State - Ms. Mbithe