



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

PETITION NO.153 OF 2019

CHARLES NDORO CHAKA.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT ON RESENTENCING

1. The Petitioner herein was arraigned before the **Mombasa High Court** in **Criminal Case No. 4 of 2007** on a charge of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**.
2. The particulars of the offence were that on the night of **16th/17th December 2006** at about 1.00 a.m. at Jorori Village Musulwa Location of Kwale District within Coast Province murdered **MORRIS NDORO CHAKA**.
3. The Petitioner entered a plea of '*not guilty*' and his trial commenced. Ultimately, the learned trial Judge found him guilty of the said offence, convicted him and sentenced him to serve 45 years in prison.
4. By this Petition, the Petitioner is seeking a re-sentence pursuant to the Supreme Court's decision in the case of **Francis Karioko Muruatetu & Another v Republic [2017] eKLR**, where the apex Court decided that a mandatory death sentence is against the Constitution.
5. The brief facts of the prosecution case were that on the night of 16th/17th December 2016, the deceased was asleep in his house with his two younger brothers, RN PW1 and JN - PW6. The deceased's wife Ruth Morris -PW4 told the court that she was not in her home on the material night as she had traveled to her home in Shimba Hills to attend a funeral. During the night, PW1 and PW6 told the court that at about 1.00 am, they heard the door being pushed open. A man demanded money from the deceased. The deceased was then ordered out of the house and PW6 heard him cry out saying '*mama nauliwa*' meaning '*mother I am being killed*'. Then a man came to the bedroom and ordered PW1 and PW6 to cover themselves. They obliged. Then the two young boys were ordered to leave the deceased's house and to go back to their parent's home. As they left they noticed the deceased lying on the floor with clothes covering him, which clothes were on fire. PW1 and PW6 went outside and passed the remainder of the night in a nearby ditch. When they woke up at 6.00 a.m., they ran to their home and told their parents what had happened. PW3 - Rhoda Nyoro, the mother of the deceased, rushed back to the scene but found the deceased already dead. The matter was reported to the sub-chief and then to police from Kwale Police Station who went and removed the body to Msambweni District Hospital Mortuary. The accused who was identified by PW1 and PW6 as one of the persons who attacked and killed the deceased was also arrested at the scene and taken to Kwale Police Station. Upon completion of police investigations into the matter the accused was charged.
6. In his submissions, the Petitioner stated that he regretted the offence and that he should be jailed for a maximum of 20 years and that he had reformed.
7. On his part **Ms. Wanjohi** learned prosecutor submitted that the offence committed by the Petitioner was so heinous that this Court should not interfere with the 45 years' imprisonment.
8. I have carefully considered the petition. It is worth mentioning, however, that the sentence of 45 years imposed on the Petitioner was not a mandatory sentence. The court considered everything, even mitigating circumstances before arriving at that sentence. In the Judgment, the court had this to say;

"I have considered the statement in mitigation made by Mr. Mushelle Advocate on behalf of the accused. I have also considered the pre-sentence report filed by the Probation Department. The accused committed a most heinous act against this own brother. The bone of contention between the two was a debt. The accused had the option of having the matter resolved through elders, local administration or the law. Instead he chose to take the law into his own hands and killed his own brother under very gruesome circumstances. The accused shows no remorse for his action which has no doubt impacted very negatively on his entire family. I find that a deterrent sentence is appropriate. I do hereby sentence this accused to serve a term of forty-five (45) years imprisonment"

9. Clearly, the Judgment of the court was a considered Judgment and so the case of **Muruatetu**, or for that matter resentencing, does not apply, given that the decision was made by a court of similar status as mine.

10. In the circumstances, I dismiss the Petition herein. The Petitioner shall serve the 45 years imprisonment as decreed by the trial court.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 28TH DAY OF JUNE, 2021.

E. K. OGOLA

JUDGE

Ruing delivered via MS Teams in the presence of:

Petitioner in person

Ms. Wanjohi for DPP

Ms. Peris Court Assistant