REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

MISC.CRIMINAL APPLICATION NO. 296 OF 2018

LETEIYON LETORE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant herein was convicted on the **20th July 2012** for the murder of the late Lkemperian Lempei on 24th July 2008. He was sentenced to suffer death. His appeal to the Court of Appeal was unsuccessful. Taking advantage of the ruling by the Supreme Court of Kenya in the Francis Muruatetu case and the subsequent cases thereafter the applicant has filed this motion dated **22nd November 2019** seeking to mitigate afresh.

2. In his prayers he stated that he was remorseful and regretted his action. He said that the 10 years he has been in custody has taught him a lifelong lessons and that he was now rehabilitated. He relied inter alia on the case of **DOUGLAS MUTHAURA NTORIBI V. REP. (2014) eKLR.**

3. The learned state counsel on her part opposed the application. She said that the 9 years the applicant has spent in custody were insufficient punishment considering that a life was lost. She said that although death sentence was harsh the court should take into account the circumstances that led to the applicant committing the offence.

4. The court in the case of **DALMAS OMBOKO ONGARO V. REP (2016) eKLR** explained clearly the issues of appropriate sentence and the need to see that any punishment rehabilitates the offender. It also spelt out some principles to consider when meting out a sentence.

5. The court stated that;

> **"The principles of sentencing were summarized at page 86 paragraph B of the Judiciary Bench Book for Magistrates in Criminal Proceedings (published by the Kenyan Judiciary in 2004) as follows:**
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> **"In determining what is the appropriate sentence to mete out, the Court has to consider such factors as the nature of the offence, the attitude of the accused person, prevalence of the type of offence, the seriousness of the offence, the circumstances under which the offence was committed, the effect of the sentence on the accused person, the fact that the maximum sentence is intended for the worst offenders of the class for which the punishment is provided, etc. (Makanga v R.Criminal Appeal No. 972 of 1983 (unreported)). The Court may also consider the value of the subject matter of the charge (Mathai v R [1983] KLR 442) and whether there has been restitution of the property by the accused (Hezekiah Mwaura Kibe v R [1976] KLR 118)."**
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> **The antecedents of an accused person also come into play when the Court is considering the appropriate sentence. If an accused person is a first offender the sentence ought to reflect this fact as the aim of the Court is to encourage reform and discourage recidivism."**

6. In the instant case it is true that there was no apparent reason why the applicant on account of a dog took the life of the deceased. Although remorseful his rage of anger was uncalled for.

7. It is clear that he has spent about 10 years in custody. It is also true that for about one year after committing the offence he hide from the authorities. This of course as the learned state counsel put it was indicative of the applicant's guilt and the desire to evade punishment.

8. Nonetheless taking into consideration the above cited authorities and specifically the Supreme Court's decision in the Muruatetu case the court is inclined to consider the applicant's mitigation. It is also evident that while in custody he has learned some trade which hopefully he shall apply after getting out of prison.

9. For the above reasons the death sentence imposed against the applicant is hereby set aside and replaced with a custodial sentence of 20 years from 20th July 2012.

DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 23RD DAY OF SEPTEMBER 2021

H. K. CHEMITEI.

JUDGE.