REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAKURU

CRIMINAL APPEAL NUMBER 262 OF 2015

KANDIE YATOR.....APPELLANT

-VERSUS-

REPUBLIC.....ESPONDENT

RULING

The applicant Kandie Yator was convicted for the offence of Robbery with Violence contrary to Section 296(2) of the Penal Code and sentenced to death as prescribed by the law on the 29th March 2006.

He has now approached this court for re-sentensing upon abandoning his appeal against both conviction and sentence by his petition of appeal filed herein.

I have considered the judgment of the trial court at the Chief Magistrate's Court at Molo, Criminal case No. 2714 of 2005.

The applicant tendered his mitigation before me on the 29th July 2019. I have also considered recommendations filed by the officer in charge of Naivasha Maximum prison where the applicant is a death row 29/3/2006.

It is a favourable report, the applicant having taken full advantage of the rehabilitation programmes offered at the institution, as well as his good conduct in prison.

I have also taken into account the period of thirteen (13) years he has served in prison.

The Supreme Court in Petition No.15 and 16 of (2015) consolidated – **Francis Karioko Muruatetu & Another –vs- Republic (2017) e KLR** declared the mandatory death sentence imposed on convicts for capital offences as unconstitutional and recommended re-sentencing of the convicts.

The High Court under its original jurisdiction bequeathed to it under Article 165 (3) (a) lf the constitution has power to re-sentence persons under the death row.

However, each case is to be considered on its peculiar circumstances – **Miscl. Criminal appl. No. 64 of 2018 Kiarie Wanguba –vs- Republic (2018) e KLR.**

The Supreme Court gave the guidelines for sentencing, being

· Age of the offender

· Whether the offender pleaded guilty

· Character and record of the offender

· Commission of offence in response to gender-based violence

· Remorsefulness of the offender

· Possibility of reform and social re-adaptation of the offer.

· Any other factor the court may consider relevant.

· The degree and gravity of the offence by an applicant and factors to be considered while considering re-sentencing. Numerous decisions have been pronounced by the Superior courts pursuant to the **Muruatetu case** (Supra).

In **Republic – vs- Samuel Githinji Kimaru (2018) e KLR**, the court (Ngugi J) considering the provisions of Article 165(3) (a) of the Constitution, and the **Muruatetu** case, as well as the circumstances of the robbery with violence case for which the applicant was sentenced to death, and the mitigation, re-sentenced the applicant to serve twenty years imprisonment.

The court considered **Benson Ochieng' and Another –vs- Republic (Nakuru High Court Misc. Appln No. 45/2018)** when the court invoked its jurisdiction under **Article 165(3) (a) Constitution of Kenya** and urged that the correct entry for sentencing for robbery with violence is fourteen years based on the fact that for simple robbery under Section 296(1) of the Penal Code is fourteen years imprisonment.

The judge was of the view that the entry point of 14 years was appropriate of reason of uniformity and parity in sentences.

I have also considered other decisions; **Cyprian Ingira Ikobwa –vs- Republic (2019) e KLR, Baya Mazera –vs- DPP (2019) e KLR, Kemboi Kipkore –vs- Republic (2018) e KLR and Paul Ouma Otieno –vs- Republic (2019) e KLR.**

Upon consideration of the above and the particular circumstances in this appeal, including the seriousness of the crime committed, and the time already served in prison of thirteen years I proceed to substitute death sentence with the time already served.

The applicant shall therefore be set at liberty unless otherwise lawfully held.

Orders accordingly.

Delivered, signed and dated at Nakuru this 23rd Day of January 2020.

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J.N. MULWA

JUDGE