



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM: CHERERE-J)

PETITION NO. 63 & 64 OF 2019

(Consolidated)

BETWEEN

ELISHA OMUKAYA MUYEYA alias Dorobo.....1ST PETITIONER

CHARLES MUKUNA OMINDE.....2ND PETITIONER

AND

REPUBLIC.....RESPONDENT

JUDGEMENT

Introduction

1. On 13th July, 2007, the trial court in **NYANDO CRIMINAL CASE NO.1304 OF 2006** convicted and sentenced the Petitioners to death for the offence of robbery with violence contrary to section 296(2) of the Penal Code. The death sentence was later commuted to life imprisonment.

2. Petitioners lodged appeals **KISUMU HIGH COURT CRIMINAL APPEAL NO. 72 and 73 of 2006** which were dismissed on 26th June, 2007 whereupon the conviction and sentence were confirmed. Their appeal to the Court of Appeal vide **KISUMU CRIMINAL APPEAL NO. 101 OF 2007** was similarly dismissed and the conviction and sentence confirmed.

3. Petitioners have petitioned the court for resentencing. Ms. Gathu, learned counsel for the state submitted that the petition was not opposed and proposed that the Petitioners who not only robbed the complainant but injured her hand be resented to 40 years.

Analysis and Determination

4. 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. 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 Petitioners have served 14 years since the date of conviction.

7. The 1st Petitioner has undertaken training and obtained various certificates as a way of reformation. I have considered all the mitigating and aggravating factors.

8. **ELISHA OMUKAYA MUYEYA alias Dorobo**, the 1st Petitioner, not only robbed the complainant but also raped her. He is resented to serve **25 years** from **13th July, 2007** when he was convicted. The 5-year sentence on the count of rape shall run concurrently with this sentence.

9. CHARLES MUKUNA OMINDE, the second Petitioner is resented to 15 years from 13th July, 2007 when they were convicted.

DELIVERED AND SIGNED IN KISUMU THIS 27TH DAY OF FEBRUARY 2020

T. W. CHERERE

JUDGE

In the presence of-

Court Assistant - **Amondi/Okodoi**

Petitioner - **Present in person**

For the State - **Ms. Maureen**