REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

MISC. CRIM. APPLICATION NO. 52 OF 2018

CHRIS KASAMBA KARANI.....APPLICANT

VERSUS

REPUBLIC.....STATE

RULING ON SENTENCE

1. The Applicant, Chris Kasamba Karani, was charged with the offence of robbery with violence contrary to Section 296(2) of the Penal Code. The particulars of the offence were that on the 3rd day of February, 2004 at Ponda Mali Estate in Nakuru Township within Nakuru District of Rift Valley province, jointly with others not before Court while armed with dangerous or offensive weapon namely pistols, pangas, metal rod robbery Betty Niwire of her cash money 2,000/= and at or immediately before or immediately after the time of such robbery used actual violence to the said Betty Nyawire.

2. The Applicant was convicted of the offence at the end of the trial. He was sentenced to death as the law then provided. His appeals to the High Court and the Court of Appeal ended up with an affirmation of the conviction and sentence.

3. The Applicant now seeks to be resentenced pursuant to the Supreme Court decision in ***Francis Karioko Muruatetu & Another v Republic [2017] eKLR***. He seeks for substitution of the death penalty he received with a prison term. In the ***Muruatetu Case***, the Supreme Court outlawed mandatory death penalty for murder as unconstitutional and struck down section 204 of the Penal Code to the extent that it prescribed mandatory death sentence upon conviction for murder.

4. The reasoning in ***Muruatetu Case*** respecting section 204 of the Penal Code (the penalty section for murder), has been extended by the Court of Appeal to the mandatory death penalty in robbery with violence cases and probably all other similar mandatory death sentences. That was in ***William Okungu Kittiny v R [2018] eKLR***.

5. In ***Benson Ochieng & Another v Republic (Nakuru High Court Misc. Application No. 45 of 2018)***, I reached the conclusion that the High Court can invoke its original jurisdiction bequeathed to it in Article 165(3)(a) of the Constitution to re-sentence persons on death row who were sentenced pursuant to the mandatory death penalty provisions which have been declared unconstitutional.

6. To determine whether the Application is meritorious and to what extent, the Court must look at the circumstances surrounding the commission of the offence, the circumstances related to the victims of the offence as well as the circumstances related to the Applicant himself.

7. Evidence adduced at the trial showed that the Applicant and his colleague went to a bar called Eliza in the night of 03/02/2004 and while there robbed the Complainant after threatening her with a pistol and a panga. They also attempted to rob a second person but the Accused Person was over-powered and was arrested.

8. In support of his Application for re-sentencing the Applicant submitted that:

a. He was a first offender;

b. That he was deeply remorseful for this actions;

c. That he has fully reformed and has maintained good character in Prison. He produced a letter of recommendation from the Officer-in-charge of Naivasha Maximum Security Prison and several certificates in Bible Studies to demonstrate that he has now taken up Christianity quite seriously and is fully rehabilitated. Indeed, the Applicant is now a Catechist in the Catholic Church.

d. That the Applicant has now learnt several skills while in Prison including upholstery for which he holds a Grade III certification by National Industrial Training Institute. The Applicant said that he will use these skills to provide for himself if released from Prison.

9. Mr. Chigiti, the Prosecutor, told the Court to consider that there were serious aggravating circumstances which the Court should consider. They include the fact that the Applicant was a member of a gang; and that they were armed with a gun and other offensive weapons to attack the victims. Finally, the Prosecutor asked the Court to consider that the Applicant has made no efforts to reconcile with the victim.

10. I have now considered all the aggravating and mitigating circumstances in the case. I have noted the aggravating circumstances pointed out by Mr. Chigiti. I have also noted that the State agrees that the offence here is not of the category of the most egregious offences which should attract the death sentence. I have noted that the Applicant has been in custody since he was arraigned on 09/02/2004 – more than sixteen years ago. I have also noted that the Prison authorities confirm that he has reformed and has been rehabilitated. Additionally, I have considered that the Applicant was relatively youthful when he committed the offence. He was barely twenty-five years old at the time.

11. I have also carefully considered the Social Inquiry Report filed by the Probation Officer in this case. It is highly favourable to the Applicant. It paints a picture of a youthful individual who took one wrong turn which, unfortunately, was errant enough to send him to Prison for so long. It also paints a picture of a man humbled by his mistakes and eager and able to make amends and change tracks. Finally, the Report paints a picture of a family eager to support the Applicant in his new life out of prison. Given all these factors, I am persuaded that no further sentencing objectives would be served by further incarcerating the Applicant.

12. Consequently, taking all factors into consideration, I hereby substitute the death sentence imposed on the Applicant with a custodial term sentence equal to the term served plus a Probationary period of three years. The Applicant shall, therefore, be released from Prison forthwith unless otherwise lawfully held. He shall, then, be on Probation for a period of three years.

13. Orders accordingly.

Dated and delivered at Nakuru this 20th day of February, 2020

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JOEL NGUGI

JUDGE