



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

(CORAM: CHERERE-J)

CRIMINAL PETITION NO. 52 OF 2019

BETWEEN

GEORGE OUMA OKOTH.....1ST PETITIONER

CALEB MUGA OPONDO.....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. 100 and 101 of 2007** which were dismissed on 17th June, 2008 whereupon the conviction and sentence were 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 resentenced to 20 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 13 years since the date of conviction.
7. The 1st Petitioner has undertaken training and obtained various certificates as a way of reformation while the 2nd Petitioner has not. After considering all the mitigating and aggravating factors, and the fact that the Petitioners were first offender, I re-sentence them to **15 years** from **13th July, 2007** when they were convicted.

DELIVERED AND SIGNED IN KISUMU THIS 20th DAY OF February 2020

T. W. CHERERE

JUDGE

In the presence of-

Court Assistant - Amondi/Okodoi

Petitioner - Present in person

For the State - Ms. Gathu