



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

PETITION NO. 228 OF 2018

CLINTON KIIO NZAMALU.....PETITIONER

AND

REPUBLIC.....RESPONDENT

JUDGMENT

1. The Petitioner was convicted for the offence of Murder in Mombasa HCCR Case No. 21 of 2009 and was sentenced to 50 years in prison. He appealed in Criminal Appeal No. 34 of 2013. The Appeal was dismissed and the sentence of 50 years enhanced to death.

2. The Appellant has now petitioned this court for review of sentence in view of the Supreme Court declaration in *Francis Kariokor Muruatetu & Another vs. Republic SCK Pet. No. 15 of 2015 [2017] eKLR*.

Brief Circumstance of the offence

3. The particulars are that on 21st May, 2009 at Mikindani Estate Ruth Muthini Waita (the Deceased) left the house at about 11 a.m. telling Bernice Mwikali that she was going to meet her cousin in town. That at around 3 p.m. the Petitioner went to a kiosk where the deceased together with Bernice Mwikali regularly left house keys and collected them and proceeded to the house and shortly thereafter the deceased followed him. A neighbor testified to have heard screams and went out to check only to find the Petitioner leaving the deceased's house with no shoes.

4. The Petitioner submitted that the Death Sentence which was commuted to life imprisonment is unconstitutional. He has now exhausted his right of appeal and approaches court to declare that the death sentence is unconstitutional and contrary to Article 50(1) and Article 25(a) of the constitution and impose an appropriate sentence upon him.

5. He further submitted that the court did not consider his mitigation as he is a first offender and has never been accused of breaking the law and at the same time he is very remorseful. The Petitioner apologized for the offence he committed as he did not intend to kill the deceased and prayed to be jailed for 20 years. He is 38 years now and has since reconciled with the family of the victim.

6. On his part Mr. Fedha, learned counsel for the State submitted that the Petitioner killed the deceased in a very savage manner, and that this action should be severely punished.

7. I have considered the Petition as well submissions of the parties. On the issue of re-sentencing. The Petitioner submitted that he has reformed however no Prisoner's Progress Report was availed in court. This Court notes that the Petitioner actually took someone's life and was comfortable enough to go about his duties even after the act, as he was arrested in Kibwezi doing his daily duties as a casual laborer, having killed and ran away.

8. I am satisfied that the crime committed by the Petitioner deserves a most severe sentence. To that end, I now set aside the death herein, and in place thereof I jail the Petitioner to forty (40) years from the date of arrest.

That is the Judgment of the court.

Right of appeal in 14 days.

Dated, Signed and Delivered at Mombasa this 30th day of March, 2020.

E. K. O. OGOLA

JUDGE

In the presence of:

Ms. Mwangeka for DPP

Petitioner in person via video link

Mr. Kaunda Court Assistant