



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM: CHERERE- J.)

PETITION NO. 69 OF 2019

BETWEEN

THOMAS OKOTH ODEDE.....PETITIONER

AND

REPUBLIC.....RESPONDENT

JUDGMENT

1. **THOMAS OKOTH ODEDE, (Petitioner)** was charged in **Kisumu High Court Criminal Murder Case No. 16 of 1998** with the offence of murder contrary to **Section 203** as read with **Section 204 of the Penal Code**. On 19th July, 2001, the Petitioner was convicted and ordered to be detained at the President's Pleasure because he was 15 years old.
2. By a petition filed on 06th November, 2019, the Petitioner has petitioned this court for resentencing on the main ground that the sentence imposed on him is unconstitutional.
3. Ms. Gathu, Senior Prosecution Counsel for the state did not oppose the application for resentence but proposed that Petitioner be resented to 20 years' imprisonment.

Analysis and Determination

4. Under the proviso to **section 333(2)** of the **Criminal Procedure Code (Chapter 75 of the Laws of Kenya)**, the court in resentencing a Petitioner is entitled to take into account the period the petitioner has spent in custody in determining the sentence and mitigating and aggravating circumstances.
5. The court record shows that the Petitioner was charged in 1998 and was convicted 3 years later in 2001. He has served 19 years within which time he has obtained three certificates in Bible Studies attained Grade 1 certificate as a tailor. The officer in charge Naivasha Maximum Prison has been his letter dated 20.09.19 vouched for Petitioner's good conduct.
6. The Petitioner who was 12 years at the time of arrest and 15 years at the time of his conviction is now 34 years. He has lived more than half of his life in prison.
7. I have considered that the Petitioner has the potential for productive life outside prison. I therefore re-sentence him to period already served.

DATED AND SIGNED IN KISUMU THIS 12th DAY OF March 2020

T. W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Amondi

Petitioner - Present in person

For the State - Ms. Gathu