



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

(CORAM: CHERERE- J.)

PETITION NO. 75 OF 2019

BETWEEN

FREDRICK SUMBA WAMEYO.....PETITIONER

AND

REPUBLIC.....RESPONDENT

JUDGMENT

1. **FREDRICK SUMBA WAMEYO, (Petitioner)** was convicted and sentenced to death for the offence of murder contrary to **Section 203** as read with **Section 204 of the Penal Code** in **Kisumu High Court Criminal Murder Case No. 18 of 2003** on 09th August, 2016. The Petitioner did not appeal to the Court of Appeal.

2. By a petition filed on 19th December, 2019, the Petitioner has petitioned this court for resentencing on the main ground that the death sentence imposed on him is unconstitutional.

3. Ms. Gathu, Senior Prosecution Counsel for the state opposed the resentence on the ground that the Petitioner committed a heinous crime and proposed that he be resented to 40 years' imprisonment.

Analysis and Determination

4. At the time of the Petitioner's conviction, death was the only available sentence for murder.

5. The Supreme Court 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 death sentence.

6. 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***).

7. 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.

8. The court record shows that the Petitioner was in custody for 8 years during trial and has served 3 years and 7 months. years. During his stay in prison, the Petitioner has not obtained 3 diplomas in bible studies as a means of reformation.

9. This court requested for the Petitioner's home report and Victim Impact Assessment report for its consideration during resentence. The home report discloses that the Petitioner who is now 36 years old is an orphan was 24 years when offence was committed and was married by the time of his arrest. His wife remarried and left their 16-year-old and 13-year-old children in the custody of Petitioner's brother. The deceased who was 21 years had been married to Petitioner for 3 months before he killed her.

10. I have reflected on the fact that the Petitioner attack on the deceased was unprovoked. Whereas his family had kind words for him, the deceased's family as stated in the victim impact assessment report have every reason to be bitter with him.

11. I have considered that the Petitioner has not undertaken bible studies and I have come to the conclusion that he has the potential for productive life outside prison. I therefore re-sentence him to **10 years'** imprisonment from date of the date of his sentence on **09th August, 2016.**

DATED AND SIGNED IN KISUMU THIS 05th DAY OF *March* 2020

T. W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Amondi & Okodoi

Petitioner - Present in person

For the State - Ms. Gathu