



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM: CHERERE-J)

PETITION NO. 65 OF 2019

BETWEEN

CALVINS PETER OMONDI.....1ST PETITIONER

LAMECK ONYANGO.....2ND PETITIONER

AND

REPUBLIC.....RESPONDENT

JUDGEMENT

Introduction

1. On 04th April, 2007, the trial court in **KISUMU CRIMINAL CASE NO.240 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 NOS. 62 and 63 of 2007** which were dismissed on 04th May, 2010 and the conviction and sentences were confirmed. Their appeal to the Court of Appeal vide **KISUMU CRIMINAL APPEAL NOS. 167 & 170 OF 2010** were similarly dismissed and the conviction and sentence 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 were armed with a firearm at the time of the robbery but did not injure the complainant during the robbery be resentenced to 20 years each.

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. As a way of reformation, the 1st Petitioner has obtained a diploma in biblical studies among other certificates whereas the 2nd Petitioner has a certificate in Home Based Care. They have the potential for productive life outside prison.
8. I have considered judgments of Superior Courts that are intended to ensure consistency and fairness. In the case of **Wycliffe Wangusi Mafura v Republic ELD CA Criminal Appeal No. 22 of 2016 [2018] eKLR**, the Court of Appeal imposed a sentence of 20 years where the appellant was involved in robbing an Mpesa shop with the use of a firearm with which he threatened the attendant but was caught before he inflicted any violence on her.

9. Consequently, both Petitioners are hereby resentenced to serve **20 years** from **04th April, 2007** when they were convicted and sentenced.

DELIVERED AND SIGNED IN KISUMU THIS 05th DAY OF March 2020

T. W. CHERERE

JUDGE

In the presence of-

Court Assistant - Amondi/Okodoi

Petitioner 1 - Present in person

Petitioner 2 - Present in person

For the State - Ms. Gathu