



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM: CHERERE- J.)

PETITION NO. 55 OF 2019

BETWEEN

IOO.....PETITIONER

AND

REPUBLIC.....RESPONDENT

JUDGMENT

1. IOO, (*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 2007** on 16th July, 2005. The sentence was later commuted to life sentence. Petitioner did not lodge an appeal with the Court of Appeal.

2. By a petition filed on 24th October, 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 has not undertaken any training as a means of rehabilitation and urged the court to uphold the life sentence.

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 17 years when the offence was committed. He was in custody for 8 ½ years during the trial and has served 4 years and 7 months making an aggregate of 13 years. During his stay in prison, the Petitioner has not undertaken any training 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 is an orphan and his only brother lives in Uganda. The deceased's relatives are still bitter with the Petitioner.

10. I have reflected on the fact that the Petitioner killed his uncle and guardian who had taken him in after the demise of his parents and at the same time set deceased's house on fire. The deceased's family that had taken in the Petitioner and accepted him as one of their own, 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 any training as a means of reformation and I have come to the conclusion that he

does not have the potential for productive life outside prison. I therefore re-sentence him to **20 years'** imprisonment from date of his arraignment in court on **02nd May, 2007**.

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