



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

MISC.CR.APPL NO.108 OF 2019

PETER KIMANI NDUNGU.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

1. This is a ruling on application for resentencing. The applicant has been charged with three counts of offences. Count one is the **offence of robbery with violence contrary to section 296 (2) of the penal code**, count 2 is the offence of **being in possession of firearm contrary to section 4 (1) of the firearm Act chapter 114 laws of Kenya** and count three **being in possession of cannabis sativa contrary to section 3 (1) of Narcotic drugs and psychotropic substances Act of 1994**. The applicant was also charged with the offence of **handling stolen property contrary to section 322 (2) of the penal code**. The appellant was convicted of count 1, 2 and 3 and acquitted of count 5. In respect to count 1 he was sentenced to serve 10 years imprisonment, count 2 two years and count 3 one year imprisonment.

2. He has exhausted his right of appeal to the High Court and now seeks resentencing in view of decision in **Supreme Court Petition No.15 and 16 of 2015 Francis Karioko Muruatetu and others Vs Republic**.

3. The applicant averred that he was sentenced by the lower court in the year 2004 and has lived peacefully with fellow inmates and prison authorities and has earned two diploma certificates in theology and certificate in masonry.

4. Progress report from prison indicate that the applicant was sentenced to 10 years imprisonment in respect to count 1 which was enhanced upon appeal to death sentence. The death sentence was commuted to life imprisonment on 26th November 2006.

5. The applicant now prays that this court exercise its discretion in view of decision in **Muruatetu** case to impose a definite jail term. The letter indicate that the applicant has been in prison for 15 years. The report confirm that the applicant has trained and successfully attained grade 2 in carpentry/joinery and certificates from Lamp and Light Bible correspondences, Discover Bible School and ROD. The prison authorities' view is that he is an exceptional candidate for pardon.

6. I note from the lower court record that in mitigation, the applicant asked for leniency and said he had a child who depended on him.

7. I have considered the application herein, the circumstances surrounding the offence and mitigation of applicant; I also note that the applicant has gained skills in prison which will enable him earn a living outside prison and will be useful to community around him. In view of the above, I find it appropriate to reduce the sentence to sentence already served.

8. FINAL ORDERS

1. Life sentence is hereby reduced to sentence already served.

Ruling dated, signed and delivered via zoom at Nakuru

This 30th day of April 2020.

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RACHEL NGETICH

JUDGE

In the presence of:

Schola - Court Assistant

Appellant in person

Rita Counsel for the State