



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

PETITION NO. 64 OF 2019

IN THE MATTER OF ARTICLES 22(1) OF THE CONSTITUTION

AND

IN THE MATTER OF ARTICLES 23,25(A), (C), 27(1) (2), 28, 20(1), 50 (2) (Q), 19 (1) (2), 165 OF THE CONSTITUTION

AND

IN THE MATTER OF SECTION 296(2) OF THE PENAL CODE

BETWEEN

JOHN ONYANGO OYATTA.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

1. By a petition filed on the 29th May 2019 **John Onyango Oyatta** ('the petitioner') seeks resentencing. The petitioner was first convicted by SRM Oyugi's Court and sentenced to 10 years imprisonment in April 2002. His appeal was dismissed by the High Court in February 2003. The conviction and sentenced were affirmed. He appealed to the Court of Appeal where he was sentenced to death. This sentence was commuted to life imprisonment by the President in 2009.

2. The petitioner claims that he has been in custody for the last 16 years since his arrest and that based on the Supreme Court ruling made on the 14.12.2017 the death sentence was declared unconstitutional and degrading hence his application.

3. The application was not opposed. Mr. Otieno for the DPP submitted that the court can resentence the petitioner.

The Supreme Court in the decision of **Francis Muruatetu vs R Pet. No.15 of 2015 &another** declared the death sentence to be unconstitutional.

In the case of **Jared Koita Injiri v Republic [2019] eKLR** the Court of Appeal held that;

“In this case the appellant was sentenced to life imprisonment on the basis of mandatory sentence stipulated by section 8(1) of the Sexual Offences Act, and if the reasoning in the Supreme Case was applied to this provision it too should be considered unconstitutional on the same basis”.

Bearing in mind the Supreme decision and the Court of Appeal decision cited on this Ruling I am of the view that I can resentence the petitioner.

I have considered the facts of the case and period spent by the applicant in remand and jail and I resentence the applicant **John Onyango Oyatta** to a period of **20(twenty) years imprisonment** from the date of sentence by the trial court 16th April 2002.

Dated, signed and delivered via Zoom (in line with the Practice Directions dated 17th April 2020) this 22nd day of **May 2020**.

R.E.OUGO

JUDGE

In the presence of;

John Onyango Oyatta /Petitioner

Mr. Otieno Senior State Counsel Office of the DPP

Rael Court Assistant