



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

PET. NO. 15 OF 2019

DAVID KIPKOECH KOSGEL.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. This is a ruling on application for resentencing. The applicant had been charged and convicted of the offence of **Robbery with violence contrary to Section 296(2) of the Penal Code** year 2000. He was sentenced to death. He has exhausted his right of appeal by filing appeal in both the High Court and Court of Appeal. His sentence was later commuted to life imprisonment and has now served 19 years 6 months in prison.

2. The applicant relied on the case of **Francis Karioko Muruatetu Vs Republic [2017] eKLR** to argue that the mandatory sentence imposed by the trial Court and upheld by the High Court and Court of Appeal is excessive and harsh and sought an appropriate sentence.

3. The applicant stated that while in prison he has trained as a carpenter and obtained certificates Grade 1, 2 and 3. He supplied Court copy of the certificates. He stated that he has reformed and learnt skills to enable him be self-reliant. He said that he has a wife and 2 children. He stated that he regrets having committed the offence and prayed that his life sentence be reduced.

4. In response **Ms. Rita Rotich** for the state opposed the application and urged the Court to consider aggravating circumstances. She submitted that the accused was not only charged with murder but he was also charged with rape in that upon robbing his victims, he raped them; she submitted that 2 victims were raped in this case and the offence is rampant in the society; that the petitioner was a social misfit and life sentence is deterring. She urged the Court to dismiss the application.

5. In a rejoinder, the applicant stated that he admits committed the offence and asked for forgiveness. He said he was 35 years at the time he was jailed and he is now 55 years old.

ANALYSIS AND DETERMINATION

6. The applicant herein was sentenced to death being the mandatory sentence provided by statute. The sentence was later commuted to life imprisonment. Mandatory nature of sentences was however declared unconstitutional by Supreme Court in **Francis Karioko Muruatetu Vs Republic [2017] eKLR** as it takes away the discretion of the trial Court to determine sentence to impose upon considering circumstances of the case and mitigating factors of the offenders. The Supreme Court found that the taking away of discretion of the Court renders the mitigating factors superfluous.

7. There is no doubt that the offence committed by the applicant was serious and he deserved deterrent sentence. The applicant however regrets his action and has taken his being in prison positively and learnt skill of carpentry which will enable him earn a living if released.

8. I take note of the fact that the offence committed by the applicant was serious. His actions must have definitely caused physical and mental anguish to the victim. He has however served considerable number of years in prison which must have given him an opportunity for self-reflection and resolve to change into a law-abiding citizen. In view of the above I am inclined to reduce his imprisonment period and hereby reduce to 30 years' imprisonment.

9. FINAL ORDERS

1. Sentence is hereby reduced to 30 years' imprisonment.

2. The sentence to run from the date the applicant was sentenced in the lower court.

Ruling dated, signed and delivered via zoom at Nakuru This 30th day of July, 2020

RACHEL NGETICH

JUDGE

In the presence of:

Jeniffer - Court Assistant

Applicant in person

Rita for State